TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 494

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON

No. 495

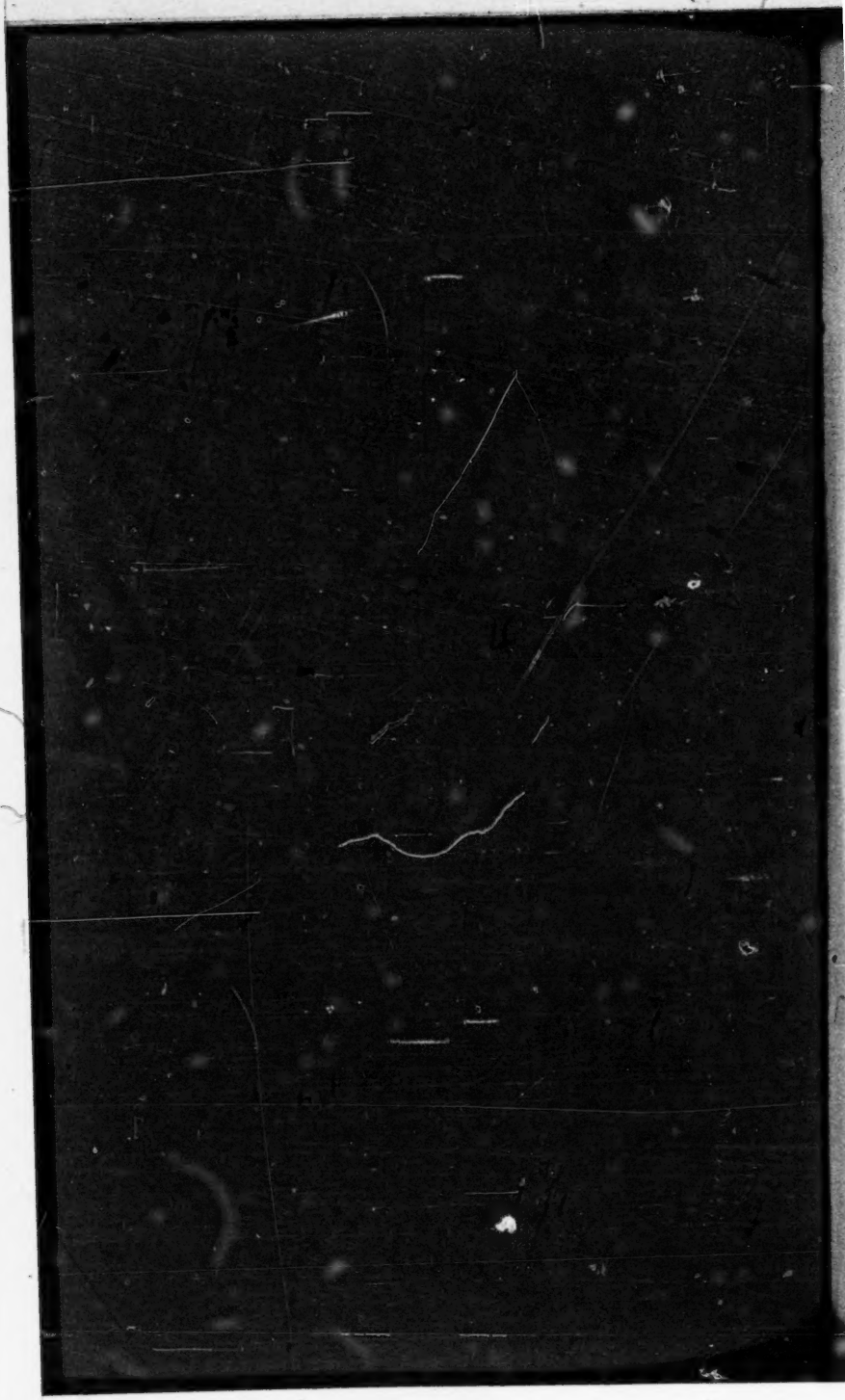
JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON, PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 9, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940



IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Plaintiffs-Appellees,

7133 *vs.*

THE UNITED STATES OF AMERICA,
Defendant-Appellant.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Plaintiffs-Appellants,

7134 *vs.*

THE UNITED STATES OF AMERICA,
Defendant-Appellee.

Counsel for Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors:
MR. WILLIAM N. HADDAD.
Counsel for The United States of America:
MR. SAMUEL O. CLARK, JR.,
MR. WILLIAM J. CAMPBELL.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

J-15603 The Gunthorp-Warren Printing Company, Chicago—12-26-39—35

INDEX.

PAPERS FILED AND PROCEEDINGS HAD IN U. S. CIRCUIT COURT OF APPEALS.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Philip L. Sullivan, District Judge of the United States for the Northern District of Illinois on Twenty-Ninth day of June, in the year of our Lord one thousand nine hundred and Thirty-Nine, being one of the days of the regular June Term of said Court, begun Monday, the Fifth day of June, and of our Independence the 163rd year. Placita.

Present:

Honorable Philip L. Sullivan, District Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

Filed Apr. 12, 1938. 2 IN THE DISTRICT COURT OF THE UNITED STATES,
Northern District of Illinois,
Eastern Division.

Mary M. Ryerson
vs.
United States of America. } No. 47078.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Twelfth day of April, A. D. 1938.

3 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

COMPLAINT.

Mary M. Ryerson, by Bell, Boyd & Marshall, her attorneys, presents this, her petition or complaint against the United States of America, pursuant to the provisions of Section 24 (20) of the Judicial Code as amended (28 U. S. C. A. 41 (20)), and for cause of action alleges as follows:

1. Plaintiff, Mary M. Ryerson, resides at 1075 E. Ringwood Road in Lake Forest in the County of Lake and State of Illinois.

2. This is a suit for the recovery of federal gift taxes erroneously and illegally assessed against the plaintiff for the years 1934 and 1935 in the amounts of $1,569.44 and $2,065.00, respectively, plus interest.

3. On or about September 16, 1935, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a gift tax return for the calendar year 1934, pursuant to the Gift Tax Act of 1932, as amended, reporting gifts of $161,965.00, exclusions of $20,000.00, deductions of $50,000.00, net gifts of $91,965.00 and a tax of $3,223.25. The plaintiff paid this tax on that date to the said Collector of Internal Revenue, together with interest in the amount of $96.70.

4. On or about March 5, 1936, plaintiff filed with said Collector of Internal Revenue a gift tax return for the calendar year 1935, reporting gifts, other than charitable, of $392,000.00, charitable gifts of $4,000.00, exclusions of $10,000.00, net gifts of $382,000.00, net gifts for the preceding year of $91,965.00, total net gifts of $473,965.00, and a tax of $44,082.37. The plaintiff paid this tax to the said Collector of Internal Revenue on that date.

5. Plaintiff, in the years 1934 and 1935 and years prior thereto, made no other gifts subject to tax under the Gift Tax Act of 1932, as amended.

6. The Commissioner of Internal Revenue, upon examination of the said return for the year 1934, increased the total gifts to $171,426.00, reduced the exclusions to $15,000.00, and increased the net gifts to $106,426.00. This resulted in the assessment of an additional tax for the year 1934, of $819.44. The plaintiff paid this additional tax, together with interest of $76.24 (or a total of $895.68), to the said Collector of Internal Revenue at Chicago, Illinois, on November 11, 1936.

7. The Commissioner of Internal Revenue, upon examination of the said return for the year 1935, increased the net gifts for 1934 to $106,426.00, and the total net gifts for 1934 and 1935 to $488.426.00, and, on that basis, assessed an additional tax for 1935 of $940.00. The plaintiff paid this additional tax, together with interest of $31.06 (or a total of $971.06), to the said Collector on November 11, 1936.

8. The gifts made by the plaintiff in the year 1934 consisted of the assignment of four insurance policies issued by the Travelers Insurance Company. The numbers of these policies, together with the dates of assignment and their values upon those respective dates, are as follows:

	Value
Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson	$ 40,696.50
Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson	40,696.50
Policy No. 110A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933, a true copy of which Trust Agreement is hereto attached as "Exhibit A" and is made a part of this Complaint	40,286.00

Policy No. 110B-NW-50 Assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934, a true copy of which Trust Agreement is hereto attached as "Exhibit B" and is made a part of this Complaint. 40,286.00.

The total value of these policies was $161,965.00.

9. The Commissioner of Internal Revenue, upon examining the said return for the year 1934, erroneously increased the values of the above mentioned policies to a total amount of $171,426.00.

10. The Trust Agreement of October 31, 1933, to the trustees under which insurance policy No. 110A-NW-50 was assigned, as above stated, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of the plaintiff) for life, and that the balance shall be added to principal. The Agreement further provides that the Trustees shall pay over the principal to Mary Ryerson Frost and her husband, Donald McKay Frost, on their joint request. Both Mary Ryerson Frost and Donald McKay Frost have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, $5,000.00 for each of them should be excluded from the gift to this trust, pursuant to Section 504 (b) of the Gift Tax Act of 1932, as amended. The Commissioner allowed an exclusion of $5,000.00 on account of the gift to Mary Ryerson Frost, but he erroneously refused to allow a similar exclusion on account of the gift to Donald McKay Frost.

11. Under the Trust Agreement of November 15, 1934, to the trustees under which policy No. 110B-NW-50 was assigned, as above stated, the proceeds of the insurance constituting the corpus of the trust are to be held for the benefit of Isabelle McGenniss Ryerson and her two children, Joan Ryerson and Anthony Ryerson, and their descendants. The income from one-third of the trust property is to be paid to Isabelle McGenniss Ryerson for her life, and afterward the principal of this one-third is to be paid to the heirs of Donald M. Ryerson. The other two-thirds of the principal are to be paid to Joan Ryerson and Anthony Ryerson, subject to a provision postponing possession and giving them only the income until they reach the ages of 26 and 30, respectively. Under

these provisions, the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).

7 Isabelle McGenniss Ryerson was 44 years of age on the date of the gift, and the value of her life interest in one-third of the policy was more than $5,000.00. The interests given to Joan Ryerson and Anthony Ryerson also had a value of more than $5,000.00 each. Accordingly, $5,000.00 for each of the said beneficiaries (or a total of $15,000.00) should be excluded from the gift to this trust, pursuant to Section 504 (b) of the Gift Tax Act of 1932, as amended. The Commissioner, however, refused to allow any amount to be excluded.

12. The plaintiff's gift tax for the year 1934 is correctly computed as follows:

Total gifts		$161,965.00
Less exclusions on account of gifts to:		
Joseph T. Ryerson	$ 5,000.00	
Edward L. Ryerson, Jr.	5,000.00	
Frost Trust dated October 31, 1933	10,000.00	
Ryerson Trust dated November 15, 1934	15,000.00	35,000.00
		$126,965.00
Exemption		50,000.00
Net gifts		$ 76,965.00
Correct tax		$ 2,473.25
Interest from March 15, 1935 to September 16, 1935		$ 74.20

The difference of $1,569.44 between the correct tax and the tax actually paid, plus the difference of $22.50 between the interest upon the correct tax and the interest actually paid on September 16, 1935, and plus $76.24 paid as interest on November 11, 1936, should be refunded to the taxpayer, together with interest.

13. The plaintiff's net gifts for the year 1934 were, as above shown, $76,965.00, and her net gifts for the year 1935, $382,000.00. The total gifts for the two years
8 were therefore $458,965.00, and the correct tax for the year 1935 was therefore $42,957.37. (There is

no controversy about the value of the gifts made in 1935.) The difference of $2,065.00 between this amount and the tax actually paid, plus $31.06 paid as interest on November 11, 1936, should be refunded to the taxpayer, together with interest.

14. On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of $1,569.44, plus interest, of the gift tax paid by her for the year 1934. A true copy of the said claim and of the statement attached thereto is hereto attached, marked "Exhibit C" and is made a part of this Complaint.

15. On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of $2,065.00, plus interest, of the gift tax paid by her for the year 1935. A true copy of the said claim and of the statement attached thereto is attached hereto, marked "Exhibit D" and is made a part of this Complaint.

16. Both of the said claims for refund were duly forwarded to the Commissioner of Internal Revenue and were considered by the Commissioner on the merits and were eventually disallowed or rejected. The notice of disallowance or rejection on both claims was mailed to the taxpayer by registered mail, as required by Section 1103 (a) of the Revenue Act of 1932, on December 10, 1936. A true copy of the said notice is hereto attached, marked "Exhibit E". A true copy of the Bureau letter of August 13, 1936, which is referred to in the said notice, is hereto attached, marked "Exhibit F".

9

Wherefore, plaintiff prays that a judgment may be entered herein in favor of the plaintiff and against the defendant for $3,764.24, plus interest as follows:

From September 16, 1935—		
On overpayment for 1934	$750.00	
On interest paid on overpayment	22.50	$ 772.50
From March 5, 1936—		
On overpayment for 1935		1,125.00
From November 11, 1936—		
On deficiency payment for 1934	$819.44	
On interest paid on such payment	76.24	
On deficiency payment for 1935	940.00	
On interest on such payment	31.06	1,866.74

at 6% per annum, together with costs of suit, and for such other and further relief as to the court may seem proper.

Mary M. Ryerson,
Plaintiff.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Plaintiff,
135 South La Salle Street,
Chicago, Illinois.

State of Illinois }
County of Cook } ss.

Mary M. Ryerson, being first duly sworn, on oath deposes and says that she is the plaintiff named in
10 the foregoing Complaint subscribed by her, that she has read the said Complaint, and that the statements contained therein are true.

Mary M. Ryerson.

Subscribed and sworn to before me this 11th day of April, 1938.

Harry E. Arthars,
(Seal) *Notary Public.*

11 "EXHIBIT A."

Indenture of Trust
for the benefit of
Mrs. Mary Ryerson Frost and Others.

This Indenture made this thirty-first day of October, Nineteen Hundred and Thirty-Three, between Donald McKay Frost, of Boston, Massachusetts (hereinafter referred to as the "Grantor"), party of the first part, and Donald McKay Frost and his wife Mrs. Mary Ryerson Frost, both of Boston, Massachusetts (hereinafter referred to as the "Trustee"), parties of the second part,

Witnesseth

That in consideration of the Trustee agreeing to undertake the duties of Trustee as hereinafter provided and of other valuable considerations, the Grantor hereby gives, grants, bargains, sells and conveys to the Trustee certain properties heretofore belonging outright to the Grantor which are listed in a statement which refers to this Indenture of Trust and which has been signed by the Trustee, but in trust nevertheless to hold and manage the same, to collect the income arising therefrom and after paying the expenses of administering the trust, to deal with and distribute the net income and principal all in the manner hereinafter provided.

1. The Trustee shall accumulate the net income received during each calendar year and on the last day of the year shall pay to Mrs. Mary Ryerson Frost, the wife of Donald McKay Frost, during her life and while she is of sound mind, one-fourth (¼) of such accumulated net income and upon the death or mental incapacity of the said Mrs. Mary Ryerson Frost, shall pay said one-fourth (¼) of such accumulated net income in equal shares to Mary Ryerson Frost, Second, and Mary Jane McKay Frost, the daughters of Donald McKay Frost and Mrs. Ryerson Frost, during their respective lives. In case of the death of either of the said daughters before
12 the termination of this trust, the half share of the said one-fourth (¼) of such accumulated net income to which such deceased daughter would otherwise have been entitled shall be distributed among the issue of such deceased daughter in equal shares per stirpes and not per capita, but in case such deceased daughter shall die without leaving issue, or if such deceased daughter shall die leaving issue but all of such issue shall die before the termination of this trust, the whole one-fourth (¼) of such accumulated net income shall be paid to the surviving daughter during her lifetime. The remaining three-fourths (¾) of such accumulated net income shall be transferred to and paid into the principal of the trust and the amount so paid into the principal of the trust shall then become and shall thereafter be dealt with as part of the principal of the trust.

2. The Trustee at any time or from time to time upon receipt of a request or requests in writing signed by Donald McKay Frost and Mrs. Mary Ryerson Frost while

both are living and are of sound mind and in case of the death or mental incapacity of either of them, by the survivor or other of them and by either of their two daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost then living and of sound mind, or in case neither of said daughters is living or of sound mind, then upon the sole request of Mrs. Mary Ryerson Frost, being of sound mind, shall distribute and pay over the principal of the trust fund in whole or in part and in equal or unequal shares to or for the benefit of Donald McKay Frost, Mrs. Mary Ryerson Frost and their daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost and their issue, or any one or more of them, all as shall be specified in said written request or requests.

3. After the death or mental incapacity of both
13 Donald McKay Frost and Mrs. Mary Ryerson Frost, the Trustee shall at any time or from time to time upon receipt of a written request or requests signed by their daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost, or by such one of them as shall then be alive and of sound mind and of full age, pay over and apply the principal of the trust fund, in whole or in part as shall be specified in said written request or requests, but in two equal shares, for the benefit of the said daughters, whether or not then of age or of sound mind, and of their issue, in the manner hereinafter provided. All such payments of principal made for the benefit of Mary Ryerson Frost, Second, and of Mary Jane McKay Frost during their respective lives shall be paid to the Trustees of certain trusts made for their benefit respectively by Mrs. Mary Ryerson Frost, as grantor, and dated December 5th, 1930, to be held and administered as a part of the principal of such trust or trusts as the same may be amended, or if either of said daughters be not then alive, such deceased daughter's share shall be paid out as if at the time of her death it had been part of the principal of the said trust made for her benefit as the same may be amended.

4. Unless sooner terminated through the distribution of the entire trust principal as hereinbefore provided, this trust shall terminate upon the death of the survivor of Mrs. Mary Ryerson Frost and her children Mary Ryerson Frost, Second, and Mary Jane McKay Frost, all of whom are now alive, and upon such termination the trust fund then remaining shall be divided into two equal

shares and one of such shares shall be paid out as if at the time of her death it had been part of the principal of the trust made for the benefit of Mary Ryerson Frost, Second, and dated December 5th, 1930, as the same may be amended, and the other of such shares shall be paid out as if at the time of her death it had been part of the principal of the trust made for the benefit of Mary Jane McKay Frost and dated December 5th, 1930, as the same may be amended.

5. This trust may be altered or amended at any time or from time to time by an instrument or instruments in writing delivered to the Trustee and signed by the following parties:—

(a) During the joint lives of Donald McKay Frost and Mrs. Mary Ryerson Frost and so long as they shall both be of sound mind, by an instrument or instruments in writing signed by both of them.

(b) After the death or mental incapacity of Donald McKay Frost by an instrument or instruments in writing signed by Mrs. Mary Ryerson Frost, if she is of sound mind.

(c) After the death or mental incapacity of Mrs. Mary Ryerson Frost by an instrument or instruments in writing signed by Donald McKay Frost, if he is of sound mind, and by either one of his daughters, Mary Ryerson Frost, Second, or Mary Jane McKay Frost, then of age and of sound mind.

(d) No alteration or amendment of this instrument may be made after the death or mental incapacity of both Donald McKay Frost and Mrs. Mary Ryerson Frost.

6. After Donald McKay Frost shall cease to be Trustee hereunder, there shall be always three persons acting as Trustees of this trust, but pending the filling of any vacancy, the Trustee or Trustees in office shall be vested with all powers conferred hereunder upon the Trustee. Trustees successor to Donald McKay Frost and Mrs. Mary Ryerson Frost may be appointed by an instrument in writing executed by Donald McKay Frost and Mrs. Mary Ryerson Frost, while they are of sound mind, or in case of the death or mental incapacity of either of them by the survivor or other of them and such appointments shall take effect at the time or upon the event specified in such instrument; and they or the survivor or other of them from time to time by an instrument in writing may revoke any such appointment and make new appointments. In case of a vacancy occurring in the

office of Trustee which has not been provided for as aforesaid, the surviving, remaining or other Trustee or Trustees may appoint by an instrument in writing a successor Trustee to fill such vacancy, but subject to the approval in writing of Mrs. Mary Ryerson Frost and Donald McKay Frost so long as they shall be alive and of sound mind and upon the death or mental incapacity of either of them by the survivor or other of them. After the death or mental incapacity of both Mrs. Mary Ryerson Frost and Donald McKay Frost, vacancies in the office of Trustee hereunder may be filled by an instrument in writing signed by the surviving, remaining or other Trustee or Trustees, but subject to the approval in writing of Mary Ryerson Frost, Second, and of Mary Jane McKay Frost, so long as they shall be alive and of sound mind and upon the death or mental incapacity of either of them, by the survivor or other of them. If at any time there should be no person occupying the office of Trustee hereunder and if there should be no effective provision hereunder for the appointment of a successor Trustee or Trustees, then all persons who at that time are entitled to receive any share of the trust income, and who are of age and of sound mind, may by an instrument in writing signed by all of them appoint successor Trustees.

7. No person at any time entitled under this instrument to receive capital or income shall have power to alienate or anticipate any payment thereof nor shall any such capital or income be subject to the control of any husband of any beneficiary hereunder or to be taken for the satisfaction of the claims of any creditor or representative of creditors of any such beneficiary.

8. The Trustee shall have the following powers in addition to and not in limitation of his common law and statutory powers:—

(a) He shall not be required to give any surety or sureties on his official bonds and he shall collect the income, rents and profits on the property held in trust and after deducting the expenses and charges of administering the trust and fair compensation on income received shall make the payments herein specified to the parties entitled thereto from time to time on their personal receipt independent of the control of any husband or creditor.

(b) He may from time to time mortgage or lease both real and personal property in the trust fund with or without option to purchase and although for a term extending

beyond the termination of the trust, and may sell the said property in whole or in part at public or private sale without approval of any court and without liability upon any person dealing with the Trustee to see to the application of any money or other property delivered to him; exchange property for other property; invest and reinvest in securities or properties although of a kind or in an amount which ordinarily would not be considered suitable for a trust investment; keep any or all securities or other property in the name of some other person or corporation or in his own name without disclosing his fiduciary capacity; determine what shall be charged or credited to income and what to principal notwithstanding any determination by the courts and specifically but without limitation make such determination in regard to stock and
17 cash dividends, rights and all other receipts in respect of the ownership of stock; purchase or retain stocks which pay dividends in whole or in part otherwise than in cash and in his discretion treat such dividends in whole or in part as income; participate in such manner as he deems proper in any reorganization, merger or consolidation affecting any of the trust property; determine who are the distributees hereunder and the proportions in which they shall take, make payments of principal and of income direct to and otherwise deal with minors hereunder as though they were of full age; make distributions or divisions of principal hereunder in property in kind at values determined by him; pay, compromise or contest any claim or other matter directly or indirectly affecting the trust fund; employ counsel for any of the above or other purposes and determine whether or not to act upon his advice; and receive property from any person by will or otherwise to be added to the trust fund and to be held, administered and accounted for as a part thereof. All divisions and decisions made by the Trustee in good faith shall be conclusive on all parties in interest.

(c) He shall have full power and authority from time to time in his discretion without order or license of any court to allot such securities or other property or such shares in securities or other property of the trust fund in satisfaction of the whole or part of any distributive share hereunder as in his uncontrolled discretion he shall deem fair.

(d) No Trustee shall be liable for the acts or omissions of any other Trustee and each Trustee shall be liable only for his own acts or omissions when done in bad faith.

18 A Trustee may leave the trust property in the possession and control of a co-Trustee.

(e) During the lives of Mary Ryerson Frost and Donald McKay Frost and of the survivor of them and while they or either of them shall be of sound mind, the Trustee shall not dispose of any shares in the stock of the corporation of Joseph T. Ryerson & Son, Inc., an Illinois corporation, which may at any time form part of the principal of the trust fund, except with the approval in writing of Mary Ryerson Frost and Donald McKay Frost, while both are living and of sound mind, and after the death or mental incapacity of either of them with the approval in writing of the survivor or other of them. If the Trustee at any time has requested such approval and it has been refused, the Trustee thereafter shall not be responsible for any consequences resulting from such refusal.

9. Any Trustee may resign by an instrument in writing, without intervention of any court, if a co-Trustee or co-Trustees remain in office or if the resignation is to take effect upon the appointment and acceptance of a successor Trustee. Any individual co-Trustee may from time to time by written power of attorney delegate any powers to one or more of his co-Trustees, with or without power of substituting another co-Trustee, for a period not exceeding six months, and may successively renew any such delegation by like powers of attorney. Any Trustee may be authorized in writing by the other Trustee or Trustees to sign checks on a bank account and to manage the ordinary business of the trust. While a Trustee is sick or absent from the United States, the other Trustee or Trustees may, for a period of six months, exercise the powers of all of the Trustees. The written instruments embodying resignations, appointments, revocations of appointments and acceptances of Trustees hereunder

19 and alterations or amendments of this Indenture shall be kept annexed to the executed copy of this Indenture in the Trustee's hands. Any person dealing with the Trustee may rely on a copy of this Indenture and of any instrument annexed hereto, certified by a Trustee, to the same extent that he might rely on the original. Any Trustee succeeding to office hereunder shall ipso facto upon acceptance of the trust become vested with title to the trust property, with all the powers conferred hereunder upon the Trustee, without the necessity of other instruments. In this Indenture and in alterations and

amendments thereof, wherever the context permits, references to the Trustee mean the one or more Trustees for the time being in office.

10. The provisions of this Indenture shall be construed pursuant to the laws of the Commonwealth of Massachusetts.

In Witness Whereof, we have hereunto set our hands and seals on the day and year first above written.

(signed) Donald McKay Frost, (Seal)
(signed) Donald McKay Frost, (Seal)
(signed) Mrs. Mary Ryerson Frost. (Seal)

In the presence of:
(signed) Mabel V. Brooks,
(signed) Mildred B. Farrar.

Commonwealth of Massachusetts.

Suffolk, ss. October 31, 1933.

Then personally appeared the above-named Donald McKay Frost and acknowledged the foregoing instrument to be his free act and deed.

Before me—

(signed) Robert P. Lyle,
(Notarial Seal) *Notary Public.*

EXHIBIT B.

This Indenture, made this 15th day of November, 1934, by and between Mary Mitchell Ryerson, of Lake Forest, Illinois, hereinafter sometimes termed the Grantor, party of the first part, and Joseph T. Ryerson and Edward L. Ryerson, of Chicago, Illinois, as Trustees, hereinafter sometimes termed the Trustees, parties of the second part,

Witnesseth:

The Grantor has assigned, transferred, set over, and delivered to the parties of the second part and to their successors in said trust the insurance upon her life described in Schedule A attached hereto, together with all her right, title, and interest therein and all of the rights, options, and privileges thereunder, which insurance and the avails thereof are to be held and distributed as hereinafter set forth, To Have And To Hold unto the said parties of the second part and their successors in said

trust, in trust for the purposes, upon the trusts, and subject to the terms, covenants, conditions, and provisions hereinafter set forth.

Article I.

The Trustees shall collect all sums which may be due upon said insurance, with power to bring suit upon, compromise or submit to arbitration any claim upon or in relation thereto, and their receipt shall constitute a full quittance to the insurer, which shall not be bound to see to the application of any sums paid. The Trustees may also, for any reason which they deem sufficient, exercise any option or privilege granted by any policy of
21 insurance included in the Trust Estate, and may receive any payments, dividends or other money payments due thereon, and may receive paid-up insurance or the cash surrender value thereof. The Trustees shall not be liable to any beneficiary hereunder for any action taken by them pursuant to this Article I or for any failure to act, or for any loss occasioned thereby, or for any mistake in judgment or otherwise, except for their own intentional breach of good faith.

Article II.

Upon the death of the Grantor, the Trustees shall hold and disburse the proceeds and avails of such insurance for the benefit of Isabelle McGenniss Ryerson, widow of the Grantor's son, Donald Mitchell Ryerson, and for the benefit of Joan Ryerson and Anthony Ryerson, children of Isabelle McGenniss Ryerson and Donald Mitchell Ryerson, and the descendants of said children, as follows:

1. If Isabelle McGenniss Ryerson shall survive the Grantor, the Trustees shall divide the Trust Estate into two portions, one portion comprising two-thirds in value of the Trust Estate, and the other portion one-third in value thereof. The Trustees shall pay the net income of the one of said portions comprising one-third in value of the Trust Estate in convenient installments to Isabelle McGenniss Ryerson during her life. Upon the death of Isabelle McGenniss Ryerson, the Trustees shall pay, deliver, and convey the principal of the fund theretofore held for the benefit of Isabelle McGenniss Ryerson, with all unexpended accumulations thereon, to those per-
22 sons who would be the heirs at law of Donald Mitchell

Ryerson had he died upon the date of and immediately following the death of Isabelle McGenniss Ryerson.

2. The Trustees shall pay, deliver, and convey the other portion of the Trust Estate comprising two-thirds in value thereof, or all said Trust Estate if Isabelle McGenniss Ryerson shall not survive the Grantor, to the descendants of the Grantor's son, Donald Mitchell Ryerson, who shall survive the Grantor.

3. If no descendants of the Grantor's son, Donald Mitchell Ryerson, shall survive the Grantor, the Trustees shall pay over, deliver, and convey said portion comprising two-thirds in value of the Trust Estate, or all said Trust Estate if Isabelle McGenniss Ryerson shall not survive the Grantor, to the heirs at law of the Grantor.

4. While any person entitled under the foregoing provisions hereof to any part of the principal of the Trust Estate shall be under the age of twenty-six (26) years, the Trustees shall hold such part of the principal and manage it for the benefit of such person until such person shall have attained the age of twenty-six (26) years; at that time the Trustees shall pay over, deliver, and convey to such person one-third in value of that part of the principal of the Trust Estate theretofore held for the benefit of such person; the remaining two-thirds in value of that part of the principal of the Trust Estate shall be held and managed by the Trustees for the benefit of such person until he or she shall have attained the age of thirty (30) years, and at that time the Trustees shall pay, deliver, and convey to such person said remaining two-thirds in value of that part of the principal of the Trust Estate theretofore held for the benefit of such person, together with all unexpended accumulations thereon.

5. While and so long as any part of the principal of the Trust Estate shall, under the foregoing provisions, be held for any person under the age of twenty-six (26) years, the Trustees shall use and apply all or such part as to them shall seem best of the net income of that part of the principal of the Trust Estate held for the benefit of such person for or toward the maintenance or education of such person, and the Trustees may either so use and apply the same themselves or, in their discretion, pay the same or any part thereof to the guardian or parent of such person without any responsibility for the application thereof by such guardian or parent. Any part of such

net income not used or applied as aforesaid shall be accumulated and added to the principal held for such person.

6. While and so long as any part of the principal of the Trust Estate shall, under the foregoing provisions, be held for the benefit of any person who is over the age of twenty-six (26) years, the Trustees shall pay the entire net income thereof to the person for whose benefit such part of the principal of the Trust Estate is held in convenient installments, and in any event as often as once each year.

7. Wherever any gift is made herein to the heirs or descendants of any person, it shall be construed as a gift to such heirs or descendants share and share alike, per stirpes and not per capita, and whenever any of
24 such heirs or descendants shall have living descendants the parent shall take the entire share to the exclusion of his or her descendants.

8. No income or principal payable or property distributable by the Trustees under the provisions hereof shall be in any manner whatsoever pledged, assigned, transferred, sold, anticipated, charged, or encumbered by any beneficiary hereunder, either by voluntary or involuntary act or by operation of law.

Article III.

1. The Trustees shall have power, discretion, and authority: to invest and reinvest the Trust Estate in such property as to them, in their entire discretion, shall seem wise, including stocks, bonds, notes secured and unsecured, interests or shares in trust, and other personal property, with as wide latitude of investment as an individual would have if the absolute owner thereof and without being restricted to investments for trustees as authorized by any statute or rule of law; to sell, exchange, or dispose of any investments for cash or wholly or partly on credit for such prices and on such terms as they shall see fit; to deposit any stock or securities with or under the direction of any committee or other agency formed to protect such stock or securities, and to consent to any reorganization, consolidation or merger, and to pay any expenses or assessments in connection therewith; to exercise or dispose of or reject preemptive or other rights to subscribe to stock or securities; to place and keep stock,

securities, or other property in the custody of any de-
25 positary, and in the name of the Trustees or their nominees, with or without disclosing any fiduciary relationship; to employ, upon such terms as they may approve, any servants, agents, investment counsel, and attorneys, at law or in fact (including one of the Trustees), in connection with the management of the Trust Estate, and to delegate discretionary authority to one of their own number or to any other person in respect of how the capital stock of any corporation shall be voted; to pay, settle, and compromise all demands of or against the Trustees or the Trust Estate; to purchase investments from or sell them to other trusts and decedents' estates, even though one or more of the Trustees herein shall be trustees or beneficiaries of such other trusts, or executors or administrators or beneficiaries of such estates; to loan the funds of the Trust Estate to any person, partnership, or corporation, including trustees, executors, or administrators, with or without security; to borrow such sums of money as they may deem expedient and to secure repayment thereof by mortgage, pledge, or hypothecation of any property of the Trust Estate. No Trustee shall be responsible for any default of any other person or for any loss sustained by the Trust Estate in any manner other than through his own breach of good faith. No person paying money or delivering any property to the Trustees shall be required to see to the application thereof.

2. The full interest on any bonds or other obligations for the payment of money shall be reckoned as income even though they may have been purchased at a premium; and upon the maturity or sale or reinvestment thereof respectively any loss or gain realized shall fall upon
26 or inure to the principal. All dividends on shares of a corporation forming part of the principal of the Trust Estate which are payable in the shares of the corporation shall be deemed principal. The proceeds of the sale of rights to subscribe for additional stock or securities shall be deemed principal. All dividends on shares of a corporation which are payable otherwise than in the shares of the corporation itself shall be deemed income. Where the Trustees shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the Trustees. All ordinary and extraordinary cash dividends shall be deemed wholly income notwith-

standing the fact that such cash dividend represents, either wholly or in part, a distribution of assets of the corporation other than surplus earnings; provided only that upon final liquidation of a corporation amounts paid on account of such liquidation shall be deemed principal, and the Trustees are authorized, in their discretion, to determine what amounts are so paid in final liquidation.

3. If any estate, inheritance or other succession taxes or duties or transfer charges shall be assessed in connection with any gift herein made they shall be paid by the Trustees out of the principal of the Trust Estate.

Article IV.

1. The trustees hereinabove named are authorized at any time to appoint additional and successor trustees by an instrument in writing signed by the then Trustees or Trustee hereunder showing such additional or suc-
27 cessor trustee or trustees, and any trustee appointed as aforesaid shall, upon his or its acceptance of said trust, have all the rights, powers, authority, discretion, duties, and obligations (including the right to appoint additional or successor trustees) hereby conferred upon or intrusted to the Trustees originally named. Upon the death, resignation, or other contingency rendering all the survivor or remaining Trustees appointed either hereunder or by the Trustees as aforesaid unable to perform the duties of said trusteeship, The Northern Trust Company, a corporation of Illinois, is appointed as sole Trustee hereunder.

2. During the continuance of the trusts created and provided for hereby, a majority of the Trustees shall have all the powers, authority, and discretion conferred upon or intrusted to the whole number. Neither of the Trustees named herein shall be required to give a bond as Trustee; and they shall receive no compensation for their services as such Trustee. Any successor in trust may receive and retain reasonable compensation for all services rendered.

Article V.

The Trustees may receive from the Grantor or others additional property to be held by them upon the trusts herein specified as part of the Trust Estate, or as part of any fund created hereunder.

Article VI.

This trust may be altered, amended or revoked at any time during the lifetime of the Grantor by an instrument in writing signed by the Grantor and consented to in writing by Isabelle McGenniss Ryerson, if living, and either Joan Ryerson or Anthony Ryerson, and delivered to the Trustees, who shall thereupon endorse upon such instrument over their signatures a certificate stating the date upon which the same was delivered to them.

In Witness Whereof the party of the first part has hereunto set her hand and seal, and the parties of the second part, to evidence their acceptance of the trusts herein declared and to acknowledge receipt of the property listed in Schedule A below, have hereunto set their hands and seals the day and year first above written.

Mary M. Ryerson (Seal)
Joseph T. Ryerson (Seal)
Edward L. Ryerson (Seal)
As Trustees.

Schedule A.

Insurance of Travelers Insurance Company of Hartford upon the life of Mary Mitchell Ryerson represented by Policy Number 110 NW50.

29 "EXHIBIT C."

30 Form 843
Treasury Department
Internal Revenue Service
Revised June 1930

Claim.

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☐ Refund of Tax Illegally Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp (Date received)

State of Illinois, } ss.
County of Cook. }

Type or Print

Name of taxpayer or purchaser of stamps Mary M. Ryerson
Business address 135 South LaSalle Street Chicago Ill.
(Street) (City) (State)
Residence Lake Forest, Illinois.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed First Illinois.

2. Period (if for income tax, make separate form for each taxable year) from January 1, 1934, to December 31, 1934.

3. Character of assessment or tax Gift tax.

4. Amount of assessment, $4042.69; dates of payment September 16, 1935 and November 11, 1935.

5. Date stamps were purchased from the Government

6. Amount to be refunded $1569.44, plus interest.
7. Amount to be abated (not applicable to income or estate taxes) $———
8. The time within which this claim may be legally filed expires, under Section 528 of the Revenue Act of 1932, on November 11, 1939.

The deponent verily believes that this claim should be allowed for the reasons set forth in the statement hereto attached.

(Attach letter-size sheets if space is not sufficient.)
Signed Mary M. Ryerson.

Sworn to and subscribed before me this 14th day of November, 1936.

Harry E. Arthurs
(Signature of officer administering oath)
(Seal) *Notary Public.*
(Title)

(See Instructions on Reverse Side)

31 Statement attached to Claim for Refund of Gift Taxes—Year 1934.

The undersigned claimant filed a gift tax return for the year 1934 showing total gifts of $161,965, exclusions of $20,000 and net gifts of $91,965; and paid tax thereon of $3,223.25 on September 16, 1935. On examining the said return, the Commissioner increased the total gifts to $171,426, reduced the exclusions to $15,000, and increased the net gifts to $106,426. This resulted in the assessment of an additional tax of $819.44. The claimant paid this additional tax, together with interest (or a total of $895.68), on November 11, 1936.

The gifts made by the claimant in the year 1934 consisted of four insurance policies issued by the Travelers Insurance Company and assigned as follows:

Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson.

Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson.

Policy No. 110A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933.

Policy No. 110B-NW-50 assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934.

The values of these policies on the dates of the respective gifts were as follows:

Policy No. 82A-NW-50	$40,696.50
Policy No. 82B-NW-50	40,696.50
Policy No. 110A-NW-50	40,286.00
Policy No. 110B-NW-50	40,286.00
Total:	$161,965.00

In examining the return, the Commissioner erroneously increased these values to a total of $171,426.00.

The trust agreement of October 31, 1933, above mentioned, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of this claimant) for life, and that the balance shall be added to principal. The agreement further provides that the trustees shall pay over the principal to Mary Ryerson Frost and her husband, Donald McKay Frost, upon their joint request. Both Mary Ryerson Frost and her husband have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, $5,000 for each of them should be excluded from the gift to this trust. The Commissioner allowed a deduction of $5,000 on account of the gift to Mary Ryerson Frost, but he refused to allow a similar deduction on account of the gift to her husband.

Under the trust agreement of November 15, 1934, above mentioned, the proceeds of the insurance are to be held for the benefit of Isabelle McGenniss Ryerson and her two children, Joan Ryerson and Anthony Ryerson, and their descendants. The income from one-third of the trust property is to be paid to Isabelle McGenniss Ryerson for her life, and afterwards this one-third is to go to the heirs of Donald M. Ryerson. The other two-thirds go to Joan Ryerson and Anthony Ryerson with a provision postponing possession and giving them only the income until they reach the ages of 26 and 30. Under these provisions the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).

(Isabelle McGenniss Ryerson was 44 years of age on the date of the gift). Accordingly, $5,000 for each of the above beneficiaries (or a total of $15,000) should be excluded from the gift to this trust, but the Commissioner refused to allow any amount to be excluded.

Copies of both of the trust agreements above mentioned have already been furnished to the Commissioner.

The claimant's gift tax for the year 1934 is correctly computed as follows:

Total gifts		$161,965.00
Less exclusions		
Joseph T. Ryerson	$5,000.00	
Edward L. Ryerson, Jr.	5,000.00	
Frost Trust dated October 31, 1933	10,000.00	
Ryerson Trust dated November 15, 1934	15,000.00	35,000.00
		$126,965.00
(Balance carried forward)		$126,965.00
Exemption		50,000.00
Net gifts		$ 76,965.00
Correct tax		$ 2,473.25

The difference of $1,569.44 between this amount and the tax actually paid, should be refunded to the taxpayer, together with interest.

Mary M. Ryerson.

35 "EXHIBIT D."

36 Form 843
Treasury Department
Internal Revenue Service.
Revised June 1930.

Claim.

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☐ Refund of Tax Illegally Collected. ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess. ☐ Abatement of Tax Assessed (not applicable to estate or income taxes).	Collector's Stamp (Date received)

State of Illinois, } ss.
County of Cook. }

Type or Print

Name of taxpayer or purchaser of stamps Mary M. Ryerson.
Business address 135 South LaSalle St., Chicago Illinois.
(Street) (City) (State)
Residence Lake Forest, Illinois.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed First Illinois.
2. Period (if for income tax, make separate form for each taxable year) from January 1, 1935, to December 31, 1935.
3. Character of assessment or tax Gift tax.
4. Amount of assessment, $45,022.37; dates of payment March 5, 1936, and November 11, 1936.

5. Date stamps were purchased from the Government _____.

6. Amount to be refunded $2065.00, plus interest.

7. Amount to be abated (not applicable to income or estate taxes) $_____.

8. The time within which this claim may be legally filed expires, under Section 328 of the Revenue Act of 1932, on November 11, 1939.

The deponent verily believes that this claim should be allowed for the reasons set forth in the statement hereto attached.

(Attach letter-size sheets if space is not sufficient)

Signed Mary M. Ryerson.

Sworn to and subscribed before me this 14th day of November, 1936.

Harry E. Arthurs

(Signature of officer administering oath)

(Seal) *Notary Public.*

(Title)

(See Instructions on Reverse Side)

Certificate.

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No._____

Character of assessment and period covered_____

List_____ Year_____ Month_____

Account No. or

Page_____ Line_____

Amount assessed $_____

Total, $_____

Paid, Abated, or Credited

Date_____ Amount $_____

Pd._____ Ab._____ Cr._____

Total, $_____

Claim No._____

I certify that the records of this office show the following facts as to the purchase of stamps:

To Whom Sold or Issued_____

Kind_____ Number_____ Denomination_____

Date of sale or issue_____ Amount $_____

If special tax stamp, state:
Serial number_____
Period commencing_____

_____,
Collector of Internal Revenue.

_____
(District)

Committee on Claims

Amount claimed $_____ _____
Amount allowed $_____ _____
Amount rejected $_____ _____
Claim examined by_____
Claim approved by_____

_____
Chief of Division.

Instructions.

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

37 **Statement Attached to Claim for Refund of Gift Taxes—Year 1935.**

The undersigned claimant filed a gift tax return for the year 1935 showing net gifts for the year of $382,000; net gifts for preceding years of $91,965; and a tax for the year of $44,082.37. The claimant paid this tax on March 5, 1936.

Upon examining the 1934 and 1935 returns, the Commissioner increased the net gifts for 1934 to $106,426, and assessed an additional tax for 1935 of $940. The claimant paid this additional tax together with interest (or a total of $971.06) on November 11, 1936.

The claimants' net gifts for the year 1934 were $76,965, and her correct tax for the year 1935 was therefore $42,957.37. The difference of $2,065 between this amount and the tax actually paid should be refunded to the taxpayer, together with interest.

The differences between the Commissioner's and the taxpayer's figures as to the 1934 gifts are set forth and explained in a statement attached to a claim for refund filed by the taxpayer for the year 1934. A copy of said statement is hereto attached as Exhibit A and is made a part hereof.

Mary A. Ryerson.

38 **EXHIBIT A.**

Statement Attached to Claim for Refund of Gift Taxes—Year 1934.

The undersigned claimant filed a gift tax return for the year 1934 showing total gifts of $161,965, exclusions of $20,000 and net gifts of $91,965; and paid tax thereon of $3,223.25 on September 16, 1935. On examining the said return, the Commissioner increased the total gifts to $171,426, reduced the exclusions to $15,000, and increased the net gifts to $106,426. This resulted in the assessment of an additional tax of $819.44. The claimant paid this additional tax, together with interest (or a total of $895.68), on November 11, 1936.

The gifts made by the claimant in the year 1934 consisted of four insurance policies issued by the Travelers Insurance Company and assigned as follows:

Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson.

Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson.

Policy No. 110-A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933.

Policy No. 110B-NW-50 assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934.

The values of these policies on the dates of the respective gifts were as follows:

Policy No. 82A-NW-50—	$ 40,696.50
Policy No. 82B-NW-50—	40,696.50
Policy No. 110A-NW-50—	40,286.00
Policy No. 110B-NW-50—	40,286.00
Total:	$161,965.00

In examining the return, the Commissioner erroneously increased these values to a total of $171,426.00.

The trust agreement of October 31, 1933, above mentioned, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of this claimant) for life, and that the balance shall be added to principal. The agreement further provides that the trustees shall pay over the principal to Mary Ryerson Frost and her husband, Donald McKay Frost, upon their joint request. Both Mary Ryerson Frost and her husband have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, $5,000 for each of them should be excluded from the gift to this trust. The Commissioner allowed a deduction of $5,000 on account of the gift to Mary Ryerson Frost, but he refused to allow a similar deduction on account of the gift to her husband.

Under the trust agreement of November 15, 1934, above mentioned, the proceeds of the insurance are to be held for the benefit of Isabelle McGenniss Ryerson and her two children, Joan Ryerson and Anthony Ryerson, and their descendants. The income from one-third of the trust property is to be paid to Isabelle McGenniss Ryerson for her life, and afterwards this one-third is to go to the heirs of Donald M. Ryerson. The other two-thirds go to Joan Ryerson and Anthony Ryerson with a provision postponing possession and giving them only the income until they reach the ages of 26 and

30. Under these provisions the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).

(Isabelle McGenniss Ryerson was 44 years of age on the date of the gift). Accordingly, $5,000 for each of the above beneficiaries (or a total of $15,000) should be excluded from the gift to this trust, but the Commissioner refused to allow any amount to be excluded.

Copies of both the trust agreements above mentioned have already been furnished to the Commissioner.

The claimant's gift tax for the year 1934 is correctly computed as follows:

Total gifts		$161,965.00
Less exclusions		
Joseph T. Ryerson	$ 5,000.000	
Edward L. Ryerson, Jr.	5,000.00	
Frost Trust dated October 31, 1933	10,000.00	
Ryerson Trust dated November 15, 1934	15,000.00	35,000.00
		$126,965.00
41 Exemption		50,000.00
Net gifts		$ 76,965.00
Correct tax		$ 2,473.25

The difference of $1,569.44 between this amount and the tax actually paid, should be refunded to the taxpayer, together with interest.

Mary M. Ryerson.

42 "EXHIBIT E."

43 TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
Address Reply To
Commissioner of Internal Revenue
and refer to
MT:ET:GT:Cl-653-34-35-1st Illinois
Donor—Mary M. Ryerson

Dec. 10, 1936.

Mrs. Mary M. Ryerson,
135 South LaSalle Street,
Chicago, Illinois.

Madam:

Reference is made to the claims filed by you on November 16, 1936, for the refund of gift taxes of $1,569.44 plus interest for the calendar year 1934, and $2,065.00 plus interest for the calendar year 1935.

You contend in connection with the gifts made during the calendar year 1934 that (1) the Bureau erroneously increased the value of the insurance policies shown on the return from $161,965.00 to $171,426.00, (2) a deduction of $5,000.00 exclusion was allowed on account of the gift to Mary Ryerson Frost but no exclusion was allowed on account of the gift to her husband, (3) the gifts to Isabelle McGenniss Ryerson, Joan Ryerson and Anthony Ryerson in the trust agreement of November 15, 1934, represent present vested interests and $15,000.00 should be excluded therefrom. It is also contended that by reason of the above changes a reduction in the tax liability will result for the calendar year 1935.

The objections made by you in your claim for the refund of gift taxes for the calendar year 1934 were also made in the protest filed by you against the Bureau's tentative determination of May 16, 1936. You were advised of the reasons for the disallowance of the items claimed in a letter dated August 13, 1936, a copy of which is enclosed herewith. The evidence in the files of the Bureau pertaining to this case has been examined and such evidence does not warrant any change. Accordingly, the action taken in Bureau letter of August 13, 1936, is

upheld. Inasmuch as no reduction in the tax liability is made for the calendar year 1934, no reduction in the tax liability results for the calendar year 1935.

44 In view of the foregoing, your claims filed on November 16, 1936, for the refund of $1,569.44 plus interest and $2,065.00 plus interest for the calendar years 1934 and 1935, respectively, are rejected in their entireties.

Respectfully,
Guy T. Helvering,
Commissioner.
By D. S. Bliss,
D. S. Bliss,
Deputy Commissioner.

45 "EXHIBIT F."

46 TREASURY DEPARTMENT
Washington
Office of
Commissioner of Internal Revenue
Address Reply To
Commissioner of Internal Revenue
and refer to
MT-ET-GT-Cl-653-34-35-1st Illinois
Donor—Mary M. Ryerson

Aug. 13, 1936.

Mrs. Mary M. Ryerson,
135 South LaSalle Street,
Chicago, Illinois.

Madam:

Reference is made to the protest filed by you against the tentative determination of your gift tax liability for the calendar years 1934 and 1935 as set forth in letter addressed to you by this office under date of May 16, 1936.

The following statement shows the action contemplated as a result of careful consideration of your protest:

Schedule A.

	Returned	Tentatively Determined	Proposed Determination
Item 1	$40,696.50	$42,856.50	$42,856.50
Item 2	40,696.50	42,856.50	42,856.50
Item 3	40,286.00	42,856.50	42,856.50
Item 4	40,286.00	42,856.50	42,856.50

A re-check of the values of all of the above policies has been made. The values as tentatively determined are based on the information submitted by the insurance company which was forwarded by you with letter dated April 8, 1936. It appears that all of the policies are properly valued and no adjustments are warranted.

Exclusions $20,000.00 $10,000.00 $15,000.00

The protest to the disallowance of exclusions under the insurance policies has been carefully reviewed. It appears that under the trust created on November 15, 1934 for the benefit of your daughter-in-law, Isabelle McGenniss Ryerson, and her children, Donald Mitchell Ryerson, Joan Ryerson and Anthony Ryerson, they do not receive any benefits until after your death. It is therefore held that the gift is a future interest in property and no exclusion is allowed under the trust. A review of the trust indenture created October 31, 1933 has been made and the exclusion covering the gift to Mrs. Mary Ryerson Frost is now allowed as claimed on the return.

47 No exclusion can be allowed for Mary Jane McKay Frost or Mary Ryerson Frost, Second, as it is held that these last two mentioned grandchildren do not receive immediately the unrestricted right to the use, possession or enjoyment of any of the income or corpus of the trust; their interests are held to be future interests and accordingly no exclusions are allowable.

The following summary is submitted:

1934

	Proposed Determination
Total gifts, 1934	$171,426.00
Less: Total exclusions claimed	15,000.00
Amount of gifts included	$156,426.00
Less: Specific exemption	50,000.00
Amount of net gifts, 1934	$106,426.00
Tax on net gifts	$ 4,042.69
Tax assessed on return	3,223.25
Deficiency in tax, 1934	$ 819.44

An examination of your return for the calendar year 1935 discloses the following:

Total gifts, 1935	$392,000.00
Less: Total exclusions	10,000.00
Amount of net gifts, 1935	$382,000.00
Total amount of net gifts for preceding year (1934)	106,426.00
Total net gifts	$488,426.00
Tax on total net gifts	$ 49,800.71
Tax on total amount of net gifts for preceding year (1934)	4,778.34
Tax on net gifts, 1935	$ 45,022.37
Tax assessed on return	44,082.37
Deficiency in tax, 1935	$ 940.00

There are enclosed herewith waivers, Forms 890A, which when executed and returned to this office will expedite the closing of your gift tax returns for the years 1934 and 1935.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals.

Your reply within twenty days from the date of this letter will be appreciated.

Respectfully,

D. S. Bliss,
D. S. Bliss,
Deputy Commissioner.

Encl.—Waivers.

48 And on, to wit, the 12th day of April, 1938, came James P. Johnson, one of Plaintiff's Attorneys, and filed in the Clerk's office of said Court his certain Affidavit in words and figures following, to wit;

49 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

AFFIDAVIT.

State of Illinois } ss.
County of Cook }

James P. Johnson, being duly sworn, on oath deposes and says that he is one of the attorneys for Mary M. Ryerson, plaintiff in the above entitled cause, and that on this date he served a copy of the petition or complaint which was filed by the plaintiff in the said cause, on Michael L. Igoe, United States District Attorney for the Northern District of Illinois; and that on the same day he mailed a copy of said petition or complaint by registered letter to the Attorney General of the United States at Washington, D. C.

James P. Johnson.

Dated—April 12, 1938.

Subscribed and sworn to before me this 12th day of April, 1938.

Velma Olmstead,
(Seal) *Notary Public.*

50 And on, to wit, the 11th day of July, 1938, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit: Filed July 11, 1938.

51 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

ANSWER.

Comes now the defendant, United States of America, by its attorneys, Michael L. Igoe, United States Attorney for the Northern District of Ilinois, Eastern Division, and David L. Bazelon, Assistant United States Attorney and for answer to the bill of complaint herein states:

1. The allegations contained in paragraph 1 of the complaint are admitted.

2. The allegations contained in paragraph 2 of the complaint are denied, except that it is admitted that this is a suit for the recovery of Federal Gift Taxes assessed against the plaintiff for the years 1934 and 1935 in the amount of $1,569.44 and $2,065.00 respectively, plus interest.

3. The allegations contained in paragraph 3 of the complaint are admitted.

4. The allegations contained in paragraph 4 of the complaint are admitted.

5. The allegations contained in paragraph 5 of the complaint are, for want of sufficient information and knowledge denied.

52 6. The allegations contained in paragraph 6 of the complaint are admitted.

7. The allegations contained in paragraph 7 of the complaint are admitted.

8. The allegations contained in paragraph 8 of the complaint are denied, except that it is admitted that gifts by way of assignment of the four insurance policies referred to in said paragraph were made by the plaintiff in the year 1934 as indicated, which policies were of the total value of $171,426.00.

9. The allegations contained in paragraph 9 of the complaint are denied, except that it is admitted that the Commissioner of Internal Revenue, upon examining the said return for the year 1934, increased the values of the above mentioned policies to a total amount of $171,426.00.

10. The allegations contained in paragraph 10 of the complaint are denied, except that reference is made to Exhibit A for the terms thereof, and except that it is admitted that the Commissioner of Internal Revenue allowed an exclusion of $5,000.00 with respect to the insurance policy assigned to the trustees under the trust agreement on October 31, 1933.

11. The allegations contained in paragraph 11 of the complaint are denied, except that reference is made to Exhibit B for the terms thereof, and except that it is admitted that the Commissioner of Internal Revenue permitted no exclusion with respect to the insurance policy assigned to the trustees under the trust agreement of November 15, 1934.

12. The allegations contained in paragraph 12 of the complaint are denied.

13. The allegations contained in paragraph 13 of the complaint are denied.

53 14. The allegations contained in paragraph 14 of the complaint are admitted.

15. The allegations contained in paragraph 15 of the complaint are admitted.

16. The allegations contained in paragraph 16 of the complaint are admitted.

Wherefore, having fully answered the complaint of the plaintiff herein, defendant prays that said complaint be dismissed and costs awarded to the defendant.

M. L. Igoe,
Michael L. Igoe,
United States Attorney,
David L. Bazelon,
David L. Bazelon,
Assistant United States Attorney,
Attorneys for defendant.

State of Illinois } ss.
County of Cook }

David L. Bazelon, being first duly sworn, deposes and says that he is one of the duly appointed and qualified Assistant United States Attorneys for the Northern District of Illinois, and that in such capacity he is one of the duly authorized representatives of the defendant herein; that he is one of the persons whose name is subscribed to the foregoing Answer; that he is familiar with the contents of said Answer; and that the matters and things therein contained are true in substance and in fact except such matters and things as are denied for the reason that the affiant is without knowledge sufficient to form a belief, and that as to such matters the affiant affirms that he is without knowledge to form a belief.

David L. Bazelon.

Subscribed and sworn to before me this 11th day of July, A. D. 1938.

Anna L. Minahan,
Notary Public.

(Seal)

Filed Jan. 5, 1939. 54 And on, to wit, the Fifth day of January, 1939, came the parties hereto by their attorneys and filed in the Clerk's office of said Court their certain Stipulation of Facts in words and figures following, to wit:

55 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts herein stated are true and may be deemed to have been proved by proper evidence. This stipulation of facts is in addition to those set forth in the complaint and admitted in the answer. Each party, however, reserves the right to object to the materiality or relevancy of any of said facts and reserves the right to introduce other and further evidence not inconsistent with the facts herein stipulated or admitted in the pleadings.

1. In the year 1928 plaintiff purchased from The Travelers Insurance Company of Hartford, Connecticut, an insurance policy, No. 82-NW-50, upon the life of plaintiff in the face amount of $100,000. The effective date of this policy was February 27, 1928, and it was fully paid on March 23, 1928. This policy was subsequently reissued in the form of two single premium life insurance policies, Nos. 82A-NW-50 and 82B-NW-50, each in the face amount of $50,000, the original cost allocable to each being $39,221. Exhibit "One" attached hereto is a true copy of policy No. 82A-NW-50, which with respect
56 to its terms is identical with policy No. 82B-NW-50. On December 18, 1934, plaintiff assigned the said policies to Joseph T. Ryerson and Edward L. Ryerson, respectively.

2. The cash values of the said policies Nos. 82A-NW-50 and 82B-NW-50 on February 27, 1934 (the last anniversary date preceding the date of the assignment), were $40,696.50 each. On December 18, 1934, when the said policies were assigned, their cash values were still the same, that is, $40,696.50 each. No greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values. If the Travelers Insurance Com-

pany had written similar policies on December 18, 1934 (the date of assignments), on the life of a person of the same age as the plaintiff, it would have charged $42,856.50 each for such policies.

3. The plaintiff paid her gift tax with respect to the policies referred to in paragraph 1 upon the basis of a valuation of $40,696.50 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of $42,856.50 each.

4. In the year 1929 plaintiff purchased from the Travelers Insurance Company of Hartford, Connecticut an insurance policy, No. 110-NW-50 upon the life of plaintiff in the face amount of $100,000. The effective date of this policy was January 5, 1929, and it was fully paid on January 25, 1929. This policy was subsequently reissued in the form of two single premium life insurance poli-
57 cies, Nos. 110A-NW-50 and 110B-NW-50, each in the face amount of $50,000, the original cost allocable to each being $39,765.50. Exhibit "Two" attached hereto is a true copy of policy No. 110A-NW-50, which with respect to its terms is identical with policy No. 110B-NW-50. On December 26, 1934, plaintiff assigned the first of the said policies to Donald McKay Frost and Mary Ryerson Frost, Trustees under a Trust Agreement dated October 31, 1933, a true copy of which Trust Agreement is attached to the complaint herein as Exhibit "A." On the same date plaintiff assigned the second of the said policies to Joseph T. Ryerson and Edward L. Ryerson, Trustees under a Trust Agreement dated November 15, 1934, a true copy of which Trust Agreement is attached to the complaint herein as Exhibit "B."

5. The cash values of the said policies Nos. 110A-NW-50 and 110B-NW-50 on January 5, 1934 (the last anniversary date preceding the date of the assignment), were $40,286.00 each. On December 26, 1934, when the said policies were assigned, their cash values were still the same, that is, $40,286.00 each. No greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values. If the Travelers Insurance Company had written similar policies on December 26, 1934 (the date of assignments), on the life of a person of the same age as the plaintiff, it would have charged $42,856.50 each for such policies.

6. The plaintiff paid her gift tax with respect to the policies referred to in paragraph 4 upon the basis of a

valuation of $40,286.00 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of $42,856.50 each.

58 7. Mary Ryerson Frost and her husband, Donald McKay Frost, the beneficiaries named in the Trust Agreement of October 31, 1933, were at the date of the assignment of policy No. 110A-NW-50 to the Trustees under said Trust Agreement (and they still are) both living and of sound mind.

8. Joan Ryerson and Anthony Ryerson, beneficiaries named in the Trust Agreement of November 15, 1934, were at the date of the assignment of policy No. 110B-NW-50 to the Trustees under the said Trust Agreement the sole descendants of Donald Mitchell Ryerson. Donald Mitchell Ryerson died on May 8, 1932. On the date of the said assignment Joan Ryerson was eighteen years of age, and Anthony Ryerson was sixteen years of age. Isabel McGenniss Ryerson, another beneficiary named in the said Trust Agreement, was forty-four years of age at the date of the said assignment, and the value of her interest in the Trust Estate was increased by virtue of the said assignment of policy No. 110B-NW-50 by a sum in excess of $5,000.

9. The plaintiff made no gifts subject to tax under the Gift Tax Act of 1932 as amended, prior to the year 1934. In that year she made no gifts subject to tax under the said Gift Tax Act other than by the assignment of the four insurance policies hereinbefore referred to. In the year 1935 her total net gifts subject to tax under the said Gift Tax Act were in the amount of $382,000.

Wm. N. Haddad,
Bell, Boyd & Marshall,
Attorneys for Plaintiff.

William J. Campbell,
Attorney for Defendant.

Dated this 26th day of November, 1938.

59 **EXHIBIT ONE.**

The Travelers Insurance Company
Hartford Connecticut

(Cut)

Number—82A-NW-50.
Amount of Insurance—$50,000.
Insured—Mary M. Ryerson.
Age—72.
Beneficiary—Executors, Administrators or Assigns.
Single Premium—$39,221.00.
Effective Date—February 27, 1928.

By this Contract of Insurance Agrees to Pay

Insurance

to the above named Beneficiary at the Home Office of the Company in Hartford, Connecticut, immediately on receipt of due proof of the death of the Insured during the continuance of this contract, the amount of insurance stated above.

Premium

This contract is issued in consideration of the signed application for this insurance which is made a part hereof and copy of which is attached hereto, and of the single premium hereinabove stated, payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Effective Date

This insurance shall be effective from the date so specified above. The Insurance Years and all subsequent provisions for Cash Loans and Cash Values are computed from that date.

Incontestability

This contract shall be incontestable after it shall have been in force for a period of one year from its date of execution except for violation of the conditions of the contract relating to military or naval service in time of war if such service shall be restricted by indorsement hereon at date of execution. It is otherwise free from conditions as to residence, occupation, travel or place of death.

This contract is subject to the privileges and conditions recited on the subsequent page hereof.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Twelfth day of December, 1934.

J. S. Scott,
Department Secretary.
H. L. Flovin,
Recorder, Life Department.
L. W. Britten,
President.

Single Premium Life Contract Non-Participating
45739 Ed. January, 1927 No D. P.

60 **Special Privileges.**

Cash Loans—On demand in writing to the Company, the Insured may borrow without the consent of the Beneficiary at any time during the year on the sole security of this contract an amount not exceeding the cash value at the end of the current insurance year as specified in the table of cash values hereinafter set forth, provided: interest in advance at the rate of five and one-half per centum per annum shall be payable and the initial interest shall be deducted from the loan; the contract shall be assigned to the Company by the Insured and assignee, if any; the amount available at any time shall include any previous loan then unpaid. Loans other than to pay premiums on life contracts in this Company may be deferred for not exceeding sixty days after demand therefor is made. If the total indebtedness shall equal or exceed the cash value at the time of failure to repay any such loan or to pay interest when due, such failure shall render this contract null and void at the expiration of thirty-one days after due notice shall have been mailed by the Company to the last known address of the person to whom the loan shall have been made, and of the Insured, or assignee, if any.

Cash Values—Upon written request made by the Insured and upon surrender of this contract the Company will pay the cash value specified in the following table less any indebtedness of the Insured under this contract. These values are based upon the American Experience Table of Mortality with three and one-half per centum interest and at the end of the third year are at least

equal to the entire legal reserve on this contract less not more than two and one-half per centum of the amount insured hereby and such reserve is computed upon the same table by the net level premium method. At the end of the tenth year and thereafter the surrender value is the full reserve according to this standard. Payment of any cash value may be deferred for not exceeding sixty days after demand therefor is made.

Age 72.

At Expiration of the Following Years....	1	2	3	4
Cash and Loan Value Per $1,000 of Insurance.	701.75	734.87	775.48	785.63
At Expiration of the Following Years....	5	6	7	8
Cash and Loan Value Per $1,000 of Insurance.	796.02	813.93	831.91	841.47
At Expiration of the Following Years....	9	10	11	12
Cash and Loan Value Per $1,000 of Insurance.	850.81	868.65	877.74	886.77
At Expiration of the Following Years....	13	14	15	16
Cash and Loan Value Per $1,000 of Insurance.	895.78	904.68	913.32	921.49
At Expiration of the Following Years....	17	18	19	20
Cash and Loan Value Per $1,000 of Insurance.	929.20	936.64	943.93	950.74
At Expiration of the Following Years....	21	22		
Cash and Loan Value Per $1,000 of Insurance.	956.30	961.52		

Change of Beneficiary—Succession—Provided this contract is not assigned, the Insured may at any time and from time to time during its continuance change the Beneficiary, to take effect only when such change shall have been approved in writing by the Company, whereupon all rights of the former Beneficiary shall cease. If the Beneficiary or Beneficiaries or any of them named herein shall not survive the Insured, the proceeds of the contract or the share of the deceased Beneficiary or Beneficiaries, as the case may be, shall be paid to the executors, administrators or assigns of the Insured, unless otherwise provided in or by indorsement upon this contract.

General Conditions.

Modifications, etc.—No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President, or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Misstatement of Age—If the age of the Insured was incorrectly stated in the application for this contract, the amount payable hereunder shall be the insurance which the actual premium paid would have purchased at the true age of the Insured. Age will be admitted on satisfactory proof.

Assignment—No assignment hereof shall be binding upon the Company unless made by an instrument in writing indorsed upon this contract or attached hereto, nor unless a duplicate shall be furnished to the Company forthwith upon its execution. The Company shall not be held responsible for the validity of any such assignment. Any claim made under an assignment shall be subject to proof of interest and extent thereof.

Indebtedness—Any indebtedness to the Company on account of this contract will be deducted in any settlement hereunder.

Suicide—In case of suicide committed while sane or insane within one year from date of execution of this contract the limit of recovery hereunder shall be the premium paid.

Reserve Basis—The reserve for which funds are to be held upon this contract shall be computed upon the American Experience Table of Mortality and interest at 3½% per annum by the net level premium reserve method.

Entire Contract—This instrument and the application constitute the entire contract between the parties hereto, and all statements purporting to be made by or on behalf of the Insured shall in the absence of fraud be deemed representations and not warranties and no statement shall avoid the contract or be used in defence to a claim under the contract unless it be contained in the application herefor and a copy of such application is attached hereto.

65 **Application for Life Insurance to**

The Travelers Insurance Company, Hartford, Connecticut
Use Black Ink as this is to be Photographed

(Stamped) 915 Mar 9 1929

1. a. My Name is (First Name) Mary (Middle Name or Initial) M. (Last Name) Ryerson

b. I was born in (State or Country) New Haven (Month) Aug (Day) 28 (Year) 1855

c. My age is 72

d. I am a citizen of U. S. A.

e. I am widow

2. Post office address (Street and Number) 2558 W. 16th St. (City or Town) Chicago (County) Cook (State or Province) Ill.

3. I desire (Amount) $100,000.00 (Form) Combination Single Prem. Life Annuity (Uniform Prem. or Prem. Reduction) Plan A. Plan with No Disability Provision

4. I desire to pay premiums Single Premium annually Special instructions Date Policy Feb. 27, 1928

5. At my death the insurance shall be payable to my Executors, Administrators, or Assigns unless a named beneficiary is herein designated.

First Name Middle Name or Initial Last Name
Relationship

(The right to change the beneficiary is reserved)
Born (if continuous instalment)
Month Day Year

6. a. My occupation and duties thereof are fully described as follows:

Note—It is not sufficient to state (for example) "Merchant," "Mechanic," "Salesman." State nature of business and whether duties are superintending only. None

b. During the past five years I have engaged in no other occupation—except as herein stated: None

c. I am not engaged nor do I contemplate engaging in any form of military or naval service, nor am I a military or naval reservist—except as herein stated:

d. I do not participate nor do I contemplate participating in any form of aerial navigation, or submarine operations—except as herein stated:

e. I do not contemplate changing my occupation or

traveling or living outside of the United States or Canada —except as herein stated:

7. a. I have no life insurance—except as herein stated: (Company) (Amount) (Year Issued) None

b. I have submitted no application or medical examination for life insurance upon which I have not been notified of the action thereon—except as herein stated:

c. No application for insurance on my life has been declined or postponed, nor has any contract ever been issued other than as applied for—except as herein stated:

d. I have no accident insurance—except as herein stated:

8. I have never used liquors to excess, nor taken treatment for the liquor habit, nor have I ever used opium, chloral or any other narcotic—except as herein stated:

9. There is no history of insanity, cancer or tuberculosis among my parents, brothers or sisters—except as herein stated:

10. No change of climate has ever been sought or advised for the benefit of my health—except as herein stated:

11. I have not within two years occupied the same room or house with a consumptive—except as herein stated:

12. I am not deformed; I have had no bodily or mental disease, nor have I received medical or surgical attention within the past five years—except as herein stated:

For Home Office Indorsement Only

Contract rewritten as per amendment form #43970, copy attached to contract. 12-12-34

(Stamped) 82 NW 50

I hereby agree for myself and for any person who may have or claim an interest in any contract which may be issued upon this application, as follows: 1. That in case of suicide, committed while sane or insane, within one year from the date of the contract issued, the limit of recovery thereunder shall be the premiums paid. 2. That every declaration herein above contained is true; and that the contract issued hereupon shall not take effect unless the first premium shall be actually paid while I am in good health in so far as I have knowledge or information. 3. That my acceptance of any contract issued on this application shall constitute a ratification by me of any cor-

rections, additions or changes made by the Company and noted in the space provided for "Home Office Indorsement Only".

Dated Chicago, Ill. Mar. 5, 1928.

Witness:

M. A. Law

Signature of the person applying for insurance (Sign the name in full)

Mary M. Ryerson,
Applicant.

Request of Applicant for Temporary Term Acceptance

(A) Pending consideration by the Company of the above application, I hereby apply for life insurance protection as of this date for the amount of insurance stated in the application payable to the Beneficiary therein named and in one sum unless other provision as to the manner of payments shall be made in the contract which shall be issued upon such application.

(B) I was examined for this insurance _____ 19__ by Dr. _____.

*(C) I have paid to the agent whose name appears hereon the sum of _____ Dollars. ($_____)

_____ Applicant

*If Temporary Term Acceptance is Not desired but Full First Premium upon the contract applied for has been paid by the Applicant, cross out paragraphs (A) and (B) before Applicant signs.

To Be Completed and Signed by the Agent

I have known the Applicant for _____ years and I believe him to be in good health and working at his occupation stated in the application. I believe him to be an acceptable life insurance risk and recommend the issuance of a Temporary Term Acceptance. I remit herewith the amount which the applicant states he has paid me.

_____ Agent

To Be Completed and Signed by the Manager

I have issued No. T. T. A. 4737659.

Dated _____ 19__.

_____ Manager

61 Use Black Ink as this is
to be Photographed

The Travelers Insurance Company, Hartford, Connecticut

The Undersigned, (Insured, Beneficiary and Assignee if any) hereby request that in lieu of Contract No. 82 NW 50 upon the life of Mary M. Ryerson there be issued a new contract as follows:

Amount Form

1. $100,000 Single Premium Life on the Uniform Premium Plan with No — Disability Provision

---

2a. Premiums Payable Single Premium

	Month	Day	Year
b. Date of Birth	8	28	1855

Date new Policy

c. 2-27-1928

Ratable age

d. 72

Middle Name

First Name or Initial Last Name Relationship

3. Beneficiary Executors, Administrators or Assigns

---

4. Special instructions Reissue into two policies of 50M each.

In consideration of issue of the new contract and effective upon delivery thereof, the aforesaid original contract is hereby released and surrendered to The Travelers Insurance Company, Hartford, Connecticut, together with all right, title, claim, interest and benefit which the Undersigned have or may have thereunder; and the undersigned do hereby certify and declare that no person, firm or corporation other than those joining in this release have any interest or right therein or any title, legal or equitable, in whole or in part thereto.

Mary M. Ryerson Insured

_____ Beneficiary

_____ Assignee

Dated at Chicago, Illinois,
December 15, 1934.

_____ 19____.

62 **Policy Change Form 43970**

Its Uses and Requirements

1. To request any change which necessitates re-issue of a contract in force.
2. To request conversion of Term policies, either as of original date or attained age, the desired date of new issue to be specified in 2-C.
3. Signature of Beneficiary is required only for a change which depreciates the insurance protection or cash value of the existing contract.
4. Signature of assignee is required wherever an assignment is in effect.
5. Return of Term contract is not required where conversion is requested on form No. 43970.
6. Request for change other than conversion must be accompanied by the original contract, receipt to be given the Insured on the attached form.
7. The form must be completed and signed in ink. No changes or erasures will be admitted unless initialed by all whose signatures are required. As any error or omission will necessitate return of the form for correction it should be carefully checked before mailing to the Home Office.
8. Address all communications and return all policies intended for change to Change Division, Life Department, using Change Transmittal form No. 45625.

63 **Absolute Assignment Life Contract**

EME

Note: An assignment can be made only by an instrument in Writing Indorsed Upon The Contract Or Attached Thereto. A duplicate of such instrument must be furnished to the Company forthwith upon its execution, but the Company shall not be held responsible for the validity or effect of any such assignment.

For Value Received, I hereby assign, transfer, and set over unto Joseph T. Ryerson of _____ State of _____, his executors, administrators, successors or assigns, all my right, title, claim, interest, and benefit in and to the Contract of insurance issued by The Travelers Insurance Company, Hartford, Conn., on the life of Mary M. Ryerson and numbered 82(A)NW 50 and in and to the

contract of Life Insurance if any to which the contract hereby assigned shall be converted pursuant to the terms thereof, with the right to such assignee to exercise any and all options, rights and privileges in said contract given to the insured and/or beneficiaries or assignees hereby agreeing that all acts and things done and releases and discharges given by said assignee under this instrument shall be as binding and as effectual as if done or given by the undersigned personally.

In Testimony Whereof, I have hereunto set my hand and seal at Chicago, Illinois, this 18th day of December 1934.

Mary M. Ryerson. (L. S.)
_____ (L. S.)
_____ (L. S.)
(All names should be signed in full)

in presence of

M. A. Law of Chicago, Ill.
V. R. Fitzgerald of Chicago, Ill.
_____ of _____
(Give residence of each witness.)

Over—The form on the reverse side hereof should be filled out.

64 The Travelers Insurance Company
Hartford, Connecticut

Dear Sirs:

Please send duplicate notice of premiums due under the Contract described in the within instrument to the following address:

(Name) _____ (Street and No.) _____
(City or Town) _____ (State) _____

_____

To be signed by the Insured or Assignee.

Assignee should notify the Company immediately of any change in address.

66 The Travelers Insurance Company
Hartford, Connecticut
Number
82A-NW-50
Mary M. Ryerson
Single Premium

Life Contract

Non-Participating

In event of death, notice should be given immediately to the nearest branch office of the Company.

It is not necessary for the Insured or the Beneficiary to employ any person to collect any benefit provided in this contract.

67 EXHIBIT TWO.

The Travelers Insurance Company
Hartford, Connecticut

Amount of Insurance $50,000.

Number—110A-NW-50
Insured Mary M. Ryerson.
Age 73.
Beneficiary Executors, Administrators or Assigns.
Single Premium $39,765.50.
Effective Date January 5, 1929.

By This Contract of Insurance Agrees to Pay Insurance.

To the above named Beneficiary at the Home Office of the Company in Hartford, Connecticut, immediately on receipt of due proof of the death of the Insured during the continuance of this contract, the amount of insurance stated above.

Premium.

This contract is issued in consideration of the signed application for this insurance which is made a part hereof and copy of which is attached hereto, and of the single premium hereinabove stated, payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Effective Date.

This insurance shall be effective from the date so specified above. The Insurance Years and all subsequent provisions for Cash Loans and Cash Values are computed from that date.

Incontestability.

This contract shall be incontestable after it shall have been in force for a period of one year from its date of execution except for violation of the conditions of the contract relating to military or naval service in time of war if such service shall be restricted by indorsement hereon at date of execution. It is otherwise free from conditions as to residence, occupation, travel or place of death.

This contract is subject to the privileges and conditions recited on the subsequent page hereof.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Twelfth day of December, 1934.

J. S. Scott,
Department Secretary.
H. L. Flavin,
Recorder, Life Department.
C. B. Butler,
President.

Single Premium Life Contract. Non-Participating.
45739 Ed. January 1927 No D. P.

73 Special Privileges.

Cash Loans—On demand in writing to the Company, the Insured may borrow without the consent of the Beneficiary at any time during the year on the sole security of this contract an amount not exceeding the cash value at the end of the current insurance year as specified in the table of cash values hereinafter set forth, provided: interest in advance at the rate of five and one-half per centum per annum shall be payable and the initial interest shall be deducted from the loan; the contract shall be assigned to the Company by the Insured and assignee, if any; the amount available at any time shall include any previous loan then unpaid. Loans other than to pay premiums on life contracts in this Company may be deferred for not exceeding sixty days after demand therefor is made. If the total indebtedness shall equal or exceed the cash value

at the time of failure to repay any such loan or to pay interest when due, such failure shall render this contract null and void at the expiration of thirty-one days after due notice shall have been mailed by the Company to the last known address of the person to whom the loan shall have been made, and of the Insured, or assignee, if any.

Cash Values—Upon written request made by the Insured and upon surrender of this contract the Company will pay the cash value specified in the following table less any indebtedness of the Insured under this contract. These values are based upon the American Experience Table of Mortality with three and one-half per centum interest and at the end of the third year are at least equal to the entire legal reserve on this contract less not more than two and one-half per centum of the amount insured hereby and such reserve is computed upon the same table by the net level premium method. At the end of the tenth year and thereafter the surrender value is the full reserve according to this standard. Payment of any cash value may be deferred for not exceeding sixty days after demand therefor is made.

Age 73.

At Expiration of the Following Years....	1	2	3	4
Cash and Loan Value Per $1,000 of Insurance.	711.16	742.45	785.62	795.64
At Expiration of the Following Years....	5	6	7	8
Cash and Loan Value Per $1,000 of Insurance.	805.62	823.51	841.47	850.81
At Expiration of the Following Years....	9	10	11	12
Cash and Loan Value Per $1,000 of Insurance.	859.96	877.74	886.77	895.78
At Expiration of the Following Years....	13	14	15	16
Cash and Loan Value Per $1,000 of Insurance.	904.68	913.32	921.49	929.20
At Expiration of the Following Years....	17	18	19	20
Cash and Loan Value Per $1,000 of Insurance.	936.64	943.93	950.74	956.30
At Expiration of the Following Years....	21	22		
Cash and Loan Value Per $1,000 of Insurance.	961.52	966.18		

Change of Beneficiary—Succession—Provided this contract is not assigned, the Insured may at any time and from time to time during its continuance change the Beneficiary, to take effect only when such change shall have been approved in writing by the Company, whereupon all rights of the former Beneficiary shall cease. If the Beneficiary or Beneficiaries or any of them named herein shall not survive the Insured, the proceeds of the contract or the share of the deceased Beneficiary or Beneficiaries, as the case may be, shall be paid to the executors, administrators or assigns of the Insured, unless otherwise provided in or by indorsement upon this contract.

General Conditions.

Modifications, etc.—No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President, or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Misstatement of Age—If the age of the Insured was incorrectly stated in the application for this contract, the amount payable hereunder shall be the insurance which the actual premium paid would have purchased at the true age of the insured. Age will be admitted on satisfactory proof.

Assignment—No assignment hereof shall be binding upon the Company unless made by an instrument in writing indorsed upon this contract or attached hereto, nor unless a duplicate shall be furnished to the Company forthwith upon its execution. The Company shall not be held responsible for the validity of any such assignment. Any claim made under an assignment shall be subject to proof of interest and extent thereof.

Indebtedness—Any indebtedness to the Company on account of this contract will be deducted in any settlement hereunder.

Suicide—In case of suicide committed while sane or insane within one year from date of execution of this contract the limit of recovery hereunder shall be the premium paid.

Reserve Basis—The reserve for which funds are to be held upon this contract shall be computed upon the American Experience Table of Mortality and interest at 3½% per annum by the net level premium reserve method.

Entire Contract—This instrument and the application constitute the entire contract between the parties hereto, and all statements purporting to be made by or on behalf of the Insured shall in the absence of fraud be deemed representations and not warranties and no statement shall avoid the contract or be used in defence to a claim under the contract unless it be contained in the application herefor and a copy of such application is attached hereto.
45738 No D. P.

68 Use Black Ink as it is to be Photographed.

The Travelers Insurance Company,
Hartford, Connecticut.

The Undersigned, (Insured, Beneficiary and Assignee if any) hereby request that in lieu of Contract No. 110NW50 upon the life of Mary M. Ryerson there be issued a new contract as follows:

1. Amount—$100,000. Form—Single Premium Life. Uniform Premium on the Plan with No Disability Provision.

2A. Premiums Payable—Single Premium. B. Date of Birth—Month 8, Day 28, Year 1855. C. Date New Policy —1-5-1929. D. Ratable Age—73.

3. Beneficiary—Executors, Administrators or Assigns.

4. Special Instructions—Reissue into two policies of 50M each.

In consideration of issue of the new contract and effective upon delivery thereof, the aforesaid original contract is hereby released and surrendered to The Travelers Insurance Company, Hartford, Connecticut, together with all right, title, claim, interest and benefit which the Undersigned have or may have thereunder; and the undersigned do hereby certify and declare that no person, firm or corporation other than those joining in this release have any interest or right therein or any title, legal or equitable, in whole or in part thereto.

Mary M. Ryerson, Insured.
_____ Beneficiary.
_____ Assignee.

Dated at Chicago, Illinois, December 15, 1934.

69 **Policy Change Form 43970.**

Purposes and Requirements.

1. To request any change which necessitates re-issue of a contract in force.
2. To request conversion of Term policies, either as of original date or attained age, the desired date of new issue to be specified in 2-C.
3. Signature of Beneficiary is required only for a change which depreciates the insurance protection or cash value of the existing contract.
4. Signature of assignee is required wherever an assignment is in effect.
5. Return of Term contract is not required where conversion is requested on form No. 43970.
6. Request for change other than conversion must be accompanied by the original contract, receipt to be given the Insured on the attached form.
7. The form must be completed and signed in ink. No changes or erasures will be admitted unless initialed by all whose signatures are required. As any error or omission will necessitate return of the form for correction it should be carefully checked before mailing to the Home Office.
8. Address all communications and return all policies intended for change to Change Division, Life Department, using Change Transmittal form No. 45625.

70 EC

Absolute Assignment Life Contract

Note: An assignment can be made only by an instrument in Writing Indorsed Upon The Contract Or Attached Thereto. A duplicate of such instrument must be furnished to the Company forthwith upon its execution, but the Company shall not be held responsible for the validity or effect of any such assignment.

For Value Received, I hereby assign, transfer, and set over unto The Trustee or Trustees or successors in trust under indenture of trust dated October 31, 1933 made between Donald McKay Frost and Mary Ryerson Frost and Donald McKay Frost and amendments or supplements thereto, all my right, title, claim, interest, and benefit in and to the Contract of insurance issued by The Travelers

Insurance Company, Hartford, Conn., on the life of Mary M. Ryerson and numbered 110 (A) NW 50 and in and to the contract of Life Insurance if any to which the contract hereby assigned shall be converted pursuant to the terms thereof, with the right to such assignee to exercise any and all options, rights and privileges in said contract given to the insured and/or beneficiaries or assignees hereby agreeing that all acts and things done and releases and discharges given by said assignee under this instrument shall be as binding and as effectual as if done or given by the undersigned personally.

In Testimony Whereof, I have hereunto set my hand and seal at Chicago, Illinois, this 26th day of Dec. 1934.

Mary M. Ryerson. (L. S.)
(All names should be signed in full)

in presence of

M. A. Law of Chicago, Ill.
V. R. Fitzgerald of Chicago, Ill.
(Give residence of each witness.)

Over—The form on the reverse side hereof should be filled out.

71 The Travelers Insurance Company
Hartford, Connecticut

Dear Sirs:

Please send duplicate notice of premiums due under the Contract described in the within instrument to the following address:

(Name) Mary Ryerson Frost, Donald M. Frost.
(Street and No.) 84 State Street.
(City or Town) Boston.
(State) Massachusetts.

To be signed by the Insured or Assignee.

Assignee should notify the Company immediately of any change in address.

72 Application for Life Insurance to

The Travelers Insurance Company, Hartford, Connecticut
Answers to Questions 22 to 29 Inclusive Required Only for Short Medical Form or Non-Medical Consideration
Space numbered 28 is reserved for the Applicant to make any Additional Statements for which there is not room in the allotted space

Use Black Ink as this is to be Photographed		Ditto Marks Not To Be Used

1. Full Name—First Name Mary Middle Name or Initial M. Last Name Ryerson. Race? Caucasian, Mongolian, Malay, Negro, Indian (Answer) Caucasian.

2. Place of birth? New Haven, Conn. Date of birth? Month Aug. Day 28. Year 1855. Age nearest birthday? Years 73. Citizen of? U. S. A. Are you Married? Widow.

3. Post Office and Premiums Notice Address—Street and Number 2558 W. 16th St. City or Town Chicago. County Cook. State or Province Ill.

4. Insurance applied for—Amount 100,000.00. Form Combination Single Premium Life Annuity, Plan A. Uniform Premium or Premium Reduction. Premium Payable Annually on the Plan With No Disability Provision.

5. At my death the insurance shall be payable to my Executors, Administrators, or Assigns unless a named beneficiary is herein designated. First Name Middle Name or Initial Last Name Relationship If Trust Agreement is desired give Birth Date—Joseph T. Ryerson, Edward L. Ryerson and Donald M. Ryerson, and Mary R. Frost, daughter, in equal (copy illegible).

6. State your occupation—None.

7. Do you contemplate changing your occupation or traveling or living outside of the United States or Canada?

8. Are you engaged or do you contemplate engaging in Military or Naval Service?

9. Have you ever made an Aerial Flight? If so give particulars in Supplemental Statement.

10. What accident insurance have you? Health insurance?

11. Have you ever made application or had medical examination for life insurance upon which you have not been notified of the action thereon?

12. Has any application for insurance on your life been declined, postponed, rated up or policy issued other than as then applied for?

13. Have you ever been examined for life insurance without insurance having been issued on such examination?

14. State all Life insurance carried by you—Company Travelers. Amount 100,000. Year Issued 1925. Dis. Prov. Mo. Income.

15. Will insurance hereby applied for replace any existing insurance?

16. Have you ever taken treatment for liquor habit?

17. Have you ever used opium, chloral, or other narcotics?

18. Have you within two years occupied the same room or house with a consumptive?

19. Has any change of climate or occupation ever been made or advised for the benefit of your health?

20. Have you within the past five years suffered any bodily or mental disease or infirmity?

21. Have you within the past five years received: Medical advice or attention? Surgical advice or attention?

Note: Completion of Statements 22 to 29 Inclusive Not Required if Full Medical Examination Blank is to be Completed.

22. Have you an hernia? Have you lost the sight of either eye? Is your hearing impaired? Have you had an amputation?

23. Have you ever had: Epilepsy? Syphilis? Vertigo or Dizziness? Diabetes? Tuberculosis? Disease of Brain or Nervous System?

24. Give Details as Indicated by the Following Headings Explaining all Affirmative Answers Applicable to Questions 16 to 23 inclusive? Illness or Condition? How Long Ill? Complications? Fully Recovered? Month Year No. of Attacks Physicians Consulted

25. Family History. Age if Living. State of Health. Age at Death. Cause of Death. Duration of Fatal Illness.
Father

Mother
Brothers, Sisters—No. Living.
Brothers, Sisters—No. Dead.

26. What is your height in shoes? ft. in.

27. What is your exact weight in ordinary clothes? lbs.

28. Have you during the past two years—Gained weight? How much? Lost weight? Cause?

29. Are you now in good health?

30. Additional Statements by Applicant.

For Home Office Indorsement Only—Contract rewritten as per amendment form #43970, copy attached to contract. 12-12-34. 110 NW 50.

31. I hereby agree for myself and for any person who may have or claim an interest in any contract which may be issued upon this application, as follows: A. That in case of suicide, committed while sane or insane, within one year from the date of the contract issued, the limit of recovery thereunder shall be the premiums paid. B. That every statement herein above contained is true; and that the contract issued hereupon shall not take effect unless the first premium shall be actually paid while I am in good health in so far as I have knowledge or information. C. That my acceptance of any contract issued on this application shall constitute a ratification by me of any corrections, additions or changes made by the Company and noted in the space provided "For Home Office Indorsement Only". D. That no agent can make, alter or discharge any contract issued on this application or extend the time for payment of premiums on such contract, nor can such contract be varied or altered or its conditions waived or extended in any respect except by the written agreement of the Company, signed by the President, or one of the Vice-Presidents or Secretaries whose authority will not be delegated.

32. I have paid to..... the sum of..... ($.....) Dollars and hold this receipt bearing the number imprinted hereon.

Dated at Chicago, Ill., Jan. 5, 1929.

Witness—M. A. Law.

Mary M. Ryerson
Signature in full of person applying for insurance

5001766

74 The Travelers Insurance Company
Hartford, Connecticut

Number
110A-NW-50

Mary M. Ryerson
Single Premium

Life Contract

Non-Participating

In event of death, notice should be given immediately to the nearest branch office of the Company.

It is not necessary for the Insured or the Beneficiary to employ any person to collect any benefit provided in this contract.

75 And on, to wit, the 31st day of March, 1939, there was filed in the Clerk's office of said Court certain OPINION OF JUDGE PHILIP L. SULLIVAN in words and figures following, to wit: Filed Mar 193

76 • • (Caption—47078) • •

This suit is brought under the Tucker Act (United States Code, Chap. 28, Sec. 41 (20)) for the recovery of gift taxes for the years 1934 and 1935. The tax was assessed by the Commissioner of Internal Revenue pursuant to the Gift Tax Act of 1932 as amended. Plaintiff paid the tax and now alleges that it was wrongfully exacted. The total amount for both years is $3,764.24 plus interest.

Only issues of law are involved and they may be stated as follows:

1. Where a gift is made of a fully paid life insurance policy, is the cash surrender value on the date the gift is made determinative of the fair market value for gift tax purposes, and

2. Where a gift is made in trust are the beneficiaries, rather than the trust, the donee of the gift for the purpose of determining the number of exclusions of $5,000 allowable under Sec. 504 (b) of the Revenue Act of 1932?

Prior to 1934 plaintiff had purchased two insurance policies upon her own life in the face amount of $100,000 each and in 1934 she had each of these policies split up into two fully paid single premium policies, each in the amount of $50,000. For the purpose of clarity I shall designate the policies as policies A, B, C, and D.

In December of 1934, plaintiff assigned policies A and B to her two sons. The cash surrender values of the policies on the date of assignment were $40,696.50 each. A few days later she assigned policies C and D when the cash surrender values of these two policies were $40,-286.00 each.

It is stipuated that no greater amount could have been realized on the four policies by surrendering, or borrowing on them, or otherwise, than their cash surrender value. Plaintiff paid her gift tax on the basis of this cash surrender value, but the Commissioner refused to accept this as their true value. He chose instead to value them at the price the same insurance company would have charged for similar policies on the date of the assignment on the life of a person of the same age, sex, and condition of health as the plaintiff was at that time. This value he found to be $42,856.50. Upon this basis, the Commissioner assessed and plaintiff paid, the additional tax which is in suit.

With respect to policies A and B no controversy exists except as to their valuation. Regarding policies C and D, however, there is also a controversy concerning the number of exclusions to be allowed under Sec. 504 (b) of the Gift Tax Act of 1932.

Considering the first issue, we find that Sec. 506 of the Gift Tax Act of 1932 provides:

> "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." (U. S. C. A. Title 26, Sec. 555.)

77 Article 19 of Treasury Regulation 79, promulgated under the Revenue Act of 1932 reads:

> "* * * The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell * * *."

Plaintiff maintains that the values here, with a willing buyer and a willing seller, could be no higher than those set forth in the cash surrender value. The defendant con-

tends that this is merely an arbitrary figure fixed by the insurance company, and that if a policy holder wishes to surrender his policy he is forced to accept this predetermined price. This, defendant says, is merely its forced sale value and cannot be regarded as a reliable criterion of real value.

The Board of Tax Appeals has consistently held that the cash surrender value of a policy is the valuation to be considered for taxation purposes: *Ernest A. Cronin* v. *Commissioner*, 37 B. T. A. 914 (1938); *Mary M. Haines* v. *Commissioner*, 37 B. T. A. 1013 (1938); *Charles Lockhart, et al. Executor* v. *Commissioner*, C. C. H. 1938 Par. 7301 B, C. C. H. dec. No. 10101-B (1938); *Madeline D. Powers* v. *Commissioner*, C. C. H. Dec. No. 10, 562-E; '39, Vol. 3, p. 8586 (Jan. 9, 1939) *Henry W. Corning* v. *Commissioner*, C. C. H. Dec. No. 10,551-G; '39, Vol. 3, p. 8576, (Dec. 8, 1938). Opposed to these cases we have *Lucas* v. *Alexander*, 279 U. S. 573, where it was necessary for the court to determine the value of a policy on March 1, 1913, in order to arrive at the taxable gain accruing since that date. The court said (p. 579):

> "Under the statute, market price of the taxpayer's property on that date, where ascertainable, may be resorted to as generally a sufficiently definite and trustworthy gauge of the gain which has later accrued. But where the property has no market value, the statute must be interpreted in the light of its purpose to ascertain taxable gains accruing since March 1, 1913. Hence, in such a case, its fair value on the critical date is not necessarily what might have been realized upon it by a forced liquidation by accepting the unfavorable loan or surrender value * * *".

It is my belief that the cash surrender value is not the actual value of a policy but is purely an arbitrary figure fixed by the insurance company. Vance on Insurance on pp. 55-6 states:

> "* * * but, inasmuch as insurance companies desire to discourage the surrender of policies so far as they can equitably do so, the surrender value fixed upon a policy is usually set at a considerably lower figure than that which would be established by its reserve value. It seems that, in the absence of a specified promise so to do, the insurer is under no obligation to pay any portion of the reserve value of a policy upon its surrender."

Here the value of the gift made by the plaintiff should not be computed by a portion of its paid-in premiums, as the cash surrender value is determined, but rather by what it would cost to duplicate such a gift as of the date of the assignment.

78 The cash surrender value is the market value only of a surrendered policy, one in which the investment upon life has been terminated. It is the value of a policy computed by subtracting the insurance already received and other expenses from the amount of the premiums paid in. It does not place any value upon the investment in the insured's life expectancy.

In the case at bar the donor did not make a gift of paid-in premiums. She made a gift of an investment. The market value of that investment is what it would cost to duplicate the gift upon the day it was made. Had the donor considered she was making a gift of paid-in premiums she could have obviated the necessity of buying the policies and have made a direct transfer of the initial premium to the trust. Or she could have surrendered the policies herself and made a transfer of the cash surrender value. But she did not do this because she believed that she was making a gift of something more. She was giving the sum total of the paid-in premiums, after the insurance received had been deducted, plus an investment in her life expectancy. That additional feature, the investment in her life expectancy, which is not valued in the cash surrender of a policy, must be determined to obtain the true value of this policy. The true value of a life insurance policy still in force can be ascertained only by the cost of duplicating that policy on the date of the gift.

That an insurance policy is worth more than its cash-surrender value is recognized by the bankruptcy courts which allow a bankrupt to keep his policy providing he pays to the trustee the cash-surrender value. If the policy were worth only this surrender value the courts would not grant this privilege nor the bankrupt ever avail himself thereof.

The rule is the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made. This is a reasonable standard and one agreed upon by a willing buyer and a willing seller both of whom are acting without compulsion.

The second issue concerns the number of exclusions of

$5,000 which should be allowed plaintiff under Sec. 504 (b) of the Gift Tax Act of 1932. That section provides that in cases of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts shall not be included in the total amount of gifts made during such year for the purpose of determining the net gifts.

On December 26, 1934, plaintiff assigned policy C to Donald McKay Frost and Mary Ryerson Frost, trustees under an indenture of trust dated October 31, 1933. Section 1 of that indenture provides that the trustees shall pay one-fourth of the income of the trust to Mary Ryerson Frost during her life and accumulate the balance. Section 2 provides that the trustees, upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, shall distribute and pay over the principal of the trust to said Donald McKay Frost and Mary Ryerson Frost or their issue as shall be specified in said request. Plaintiff argues that the two beneficiaries have present vested interests and are in substance absolute owners of the property, and that, accordingly, $5,000 for each of them should be excluded from this gift. The Commissioner allowed but one exclusion.

79 Plaintiff assigned policy D to Joseph Ryerson and Edward Ryerson, trustees under an indenture of trust dated November 15, 1934. This is a trust of life insurance policies which provides for certain distributions upon the death of the grantor in the following manner; if Isobelle McGenniss Ryerson, one of the beneficiaries, survives the grantor the trustees are to divide the trust estate into two portions, one portion comprising two-thirds in value of the trust estate, and the other portion one-third. Isobelle McGenniss Ryerson is then to receive the income upon one-third the estate for her life with remainder over to certain heirs. Two-thirds of the estate, or all of the estate, if Isobelle McGennis Ryerson does not survive the grantor, is to be delivered to the descendants of grantor's son Donald Mitchell Ryerson, who shall survive the grantor.

It is stipulated that Donald Mitchell Ryerson died prior to the assignment in question, leaving as his sole descendants Joan and Anthony Ryerson.

Under the first assignment two exclusions should have been allowed. The power of control over the property which the trustees could exercise in their own favor is a present interest in the property. The government's

contention that Donald McKay Frost and Mary Ryerson Frost are not the donees of the gift because neither has individual control over the property but must act jointly with the other is without merit for under such reasoning a gift of a bank deposit, payable jointly to both of two persons (and not either) would be a gift to no one since neither had complete individual control. Yet it could not be contended that the bank was the donee.

Under the second assignment all three beneficiaries have present interests and therefore three exclusions should have been allowed. It is contended that in both the first and second assignment the trust and not the beneficiaries were the donees for the purpose of exclusions. But it is the donative intent and effect that indicates the actual donees. The intent was to confer a benefit upon the beneficiaries and not upon the trust. The transfer of mere legal title is not a transfer of anything valuable. Conceding that there is a transfer of legal interest to the trustees, still there is a simultaneous gift of an equitable interest to each beneficiary and it is the equitable transfer that should be taxable since it is the only one by which the donor has parted with, or the donee received, anything of value.

The case of *Davidson* v. *Welch*, (D. C. Mass. 1938) 22 F. Supp. 728, affirmed by the Circuit Court of Appeals under the name of *Welch* v. *Davidson* on March 2, 1939 (C. C. H. Fed. Tax Service Par. 9360), has reviewed the series of decisions indicating that the trust and not the beneficiaries are the donees. In facts similar to the case at bar the court held that the beneficiaries had present and not future interests and that the beneficiaries and not the trust were the donees. The court thereupon allowed an exclusion for each of seven beneficiaries. In affirming the district court the circuit court of appeals said:

> "The statute of 1932, like that of 1924, was 'not aimed at every transfer of legal title without consideration.' It was aimed at transfers that 'had come
> 80 to be identified more nearly with a change of economic benefits than with technicalities of title', at 'transfers of the title that have the quality of a gift.' Surely transfer of title to the trustee did not partake of the quality of a gift. The trustee was not the object of the plaintiff's bounty. The transfer to it of the bare legal title effected 'no change of economic benefits' in its behalf. The beneficiaries are the donees."

I find and rule therefore that the policies are to be valued in accordance with this opinion and that two exclusions of $5,000 each should be allowed in regard to the assignment of policy C and three conclusions in regard to the assignment of policy D.

March 31, 1939.

Philip L. Sullivan,
Judge.

81 And on, to wit, the 29th day of June, 1939, there was filed in the Clerk's office of said Court a certain OPINION of Judge Philip L. Sullivan, in words and figures following, to wit: Filed June 1939.

* * (Caption—47078) * *

In recent communications from plaintiff, the court is asked to reconsider its decision in the above entitled cause handed down on March 31st, 1939, wherein it was held, among other things, that the value for gift tax purposes of an assigned insurance policy is not the cash surrender value, but is the amount it would cost to procure a similar policy from the same insurance company on the date of the gift. Suggested findings of fact and conclusions of law have been presented to the court, but judgment has not as yet been entered.

Plaintiff bases her request for reconsideration upon the fact that at the time the gift was made there was in effect a Treasury Regulation which explicitly stated that the value of an insurance policy for gift tax purposes is its cash surrender value. Article 2 (5) Treasury Regulation 79. Plaintiff also cites two recent cases, both holding that under Article 2 (5) of Treasury Regulation 79 an irrevocable assignment of a life insurance policy constitutes a gift in the amount of its net cash surrender value.

Blaffer v. *Commissioner*, 103 Fed. (2) 489. (CCA 5th Cir.) decided April 26th, 1939.

Commissioner v. *Haines*, (CCA 3rd Cir.) decided June 14th, 1939, and not yet reported.

The decision of March 31st, 1939, in the instant case was based solely upon my construction of Sec. 506 of the Revenue Act of 1932, which provides that

"if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

Treasury Regulation 79 is now for the first time called to my attention and only Article 2(5) is quoted. However, in considering the request for a reconsideration of my former holding, I have read Treasury Regulation 79 in its entirety. In neither of the above cited cases does it appear that the courts had this regulation before them in its entirety.

Article 1 of the Regulation deals with the imposition of the tax.

Article 2 (a portion of which is here involved) reads as follows:

"Transfers Reached: The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may
83 be effected by the declaration of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State or Municipal bonds. Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interests are donatively passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. *In the following examples of transactions resulting in taxable gifts* it will be understood that the transactions occurred after the date of the enactment of the statute * * * and were not for an adequate and full consideration in money or money's worth:

(1) The transfer of property by a corporation without an adequate and full consideration in money or money's worth to B *is a gift* from the stockholders of the corporation to B.

(2) The transfer of property to B where there is imposed upon B an obligation of paying a commensurate annuity to C *is a gift* to C.

(3) The payment of money or the transfer of property to B in consideration whereof B is to render a service to C, *is a gift* to C or both B and C, depending on whether the service to be rendered by B to C is or is not an adequate and full consideration in money or money's worth for that which is received by B.

(4) Where A creates a joint bank account for

himself and B *there is a gift* to B when he draws upon the account for his own benefit to the amount drawn.

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, *constitutes a gift* in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment *is a gift* in the amount thereof.

(7) Where A purchases property and has the title thereto conveyed to himself and wife as tenants by the entirety, *there is a gift* to the wife in the amount of the value of her interest in the property determined in accordance with the law governing the rights of the tenants, the probability of survivorship being determined by tables of mortality."

It seems to me from a consideration of the title and the text of Article 2 that its sole purpose is to define and give examples of what are taxable gifts. In each subdivision, the subject is followed by the words *"is a gift"* or *"there is a gift,"* or *"constitutes a gift"*, the intent thereof not being to fix the value of the gifts, because
84 that is done by Article 19 of the Regulation, which is entitled: *"Valuation of property"* and wherein the value of the various types of property is set out. Nowhere, however, in that section is any rule laid down as to how to arrive at the value of an irrevocable assignment of a life insurance policy, for tax purposes. Subdivision 6 of Article 19 reads:

"Intangibles: *Intangibles not specifically mentioned in this article should be valued in accordance with the rule laid down in subdivision* (1) *of this article.*"

Subdivision (1) of Article 19 reads:

"General. The statute provides that *if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.* The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any

compulsion to buy or sell. Where property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case."

The rules of statutory construction require that in construing Treasury Regulations, that the same intent be given to them that the Treasury Department itself intended they should have. In arriving at this intent the court must take into consideration the entire regulation. Article 2 is entitled "Transfers Reached", and first defines four types of gifts or transfers, followed by the words *"Thus for example, a taxable transfer may be effected by the declaration of a trust,"* etc., and again, *"In the following examples of transactions resulting in taxable gifts"* etc., setting out seven examples, the fifth example being the one here involved. I am of the opinion that the words used in Example 5 cannot be construed as intending to fix the value of an irrevocably assigned insurance policy for taxable purposes, because that would not be in accord with the title of Article 2 which covers "Transfers Reached," and would also be in conflict with Article 19 of the Regulation which is entitled "Valuation of Property" and logically should govern all questions as to value. Article 2 seems to me as intended to describe every type of transfer and gift upon which a tax might be imposed, and to set out examples of such transfers and gifts.

The Revenue law of 1924 contained the first gift tax provision, which was repealed in 1926. Six years later, in the Revenue Act of 1932, a tax was again placed on gifts. (47 Stat. 248; 26 U. S. C. A. 555.) Under Section 506 thereof it was provided that "if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." Treasury Regulation 79 (containing Article 2 (5) as set out above) was issued in 1932. Section 506 was re-enacted in the Revenue Acts of 1934, 1935 and 1936, and Article 2 (5) of the Treasury
85 Regulation remained the same in 1934 and 1935. However, in 1936 the Regulation was changed by Article 19 (9) which provided that the value of the gift was not "the cash surrender value of the policy, but the cost of the contract."

In arriving at my original decision I construed Section

306 only, Regulation 79 not having then been called to my attention, and now after a careful consideration of Regulation 79 in its entirety, I see no reason for reversing my decision of March 31st, 1939.

Philip L. Sullivan,
Judge.

June 29, 1939.

86 And afterwards, to wit, on the 29th day of June, A. D. 1939, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: FINDINGS OF FACT AND CONCLUSIONS OF LAW: Filed June 29, 1939.

87 • • (Caption—47078) • •

The court having rendered its opinion upon the facts and the law in the above entitled cause, does hereby, pursuant to Rule 52 of the Rules of Civil Procedure, make the following findings of fact and conclusions of law.

Findings of Fact.

The plaintiff, Mary M. Ryerson, resides at 1075 East Ringwood Road in Lake Forest, Lake County, Illinois.

In 1928 and 1929, plaintiff purchased two insurance policies from The Travelers Insurance Company upon her own life in the amount of $100,000 each. Each of these policies was subsequently reissued in the form of two fully paid single premium policies in the amount of $50,000 each. The original cost allocable to two of these policies, those numbered 82A-NW-50 and 82B-NW-50 (hereinafter referred to as policies A and B respectively) was $39,221 each, and the original cost allocable to the remaining two policies, numbered 110A-NW-50 and 110B-NW-50 (hereinafter referred to as policies C and D respectively) was $39,765.50 each.

On December 18, 1934, plaintiff assigned policies A and B to her sons, Joseph T. Ryerson and Edward L. Ryerson, respectively. On December 26, 1934, plaintiff assigned policy C to Donald McKay Frost and Mary Ryerson Frost, trustees under an indenture of trust dated October 31, 1933. On the same date, plaintiff assigned

policy D to Joseph T. Ryerson and Edward L. Ryerson, trustees under an indenture of trust dated November 15, 1934.

The cash surrender value of policies A and B on the date they were assigned was $40,696.50 each and the cash surrender value of policies C and D on the date of assignment was $40,286.00 each. No greater amount could have been obtained or realized upon policies by surrendering them or borrowing on them, or otherwise, than these surrender values.

If The Travelers Insurance Company had written similar policies on the dates of assignment on the life of a person of the same age as the plaintiff, it would have charged $42,856.50 each for such policies.

The plaintiff paid her gift tax with respect to the policies A and B upon the basis of a valuation of $40,696.50 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of $42,856.50 each.

The plaintiff paid her gift tax with respect to the policies C and D upon a valuation of $40,286.00 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of $42,856.50.

The Indenture of Trust dated October 31, 1933, to the trustees under which policy C was assigned, provides in Section 1 that the trustees shall pay one-fourth of the income of the trust to Mary Ryerson Frost during her life, and accumulate the balance. Section 2 of the Indenture provides that the trustees shall at any time, upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, while they are both living and of sound mind, distribute and pay over the principal of the trust to the said Donald McKay Frost, Mary Ryerson Frost and their issue, or to any one or more of them, as shall be specified in the said request.

Mary Ryerson Frost and Donald McKay Frost are, and were at the time of the said assignment, living and of sound mind.

The Indenture of Trust dated November 15, 1934, to which policy D was assigned, creates a life insurance trust of insurance upon the life of the grantor, whereunder there were three beneficiaries at the time of the assignment.

On or about September 16, 1935, plaintiff filed with the

Collector of Internal Revenue at Chicago, Illinois, a gift tax return for the calendar year 1934, pursuant to the Gift Tax Act of 1932, as amended, reporting gifts of $161,965, exclusions of $20,000, deductions of $50,000, net gifts of $91,965 and a tax of $3,223.25. The plaintiff paid this tax on that date to the said Collector of Internal Revenue, together with interest in the amount of $96.70.

On or about March 5, 1936, plaintiff filed with said Collector of Internal Revenue a gift tax return for the calendar year 1935, reporting gifts, other than chargeable, of $392,000, charitable gifts of $4,000, exclusions of $10,000, net gifts of $382,000, net gifts for the preceding year of $91,965, total net gifts of $473,965 and a tax of $44,082.37. The plaintiff paid this tax to the said Collector of Internal Revenue on that date.

88

The plaintiff made no gifts subject to tax under the Gift Tax Act of 1932 as amended prior to the year 1934. In that year she made no gifts subject to tax under the said Gift Tax Act other than by the assignment of the four insurance policies hereinbefore referred to. In the year 1935, her total net gifts subject to tax under the said Gift Tax Act were in the amount of $382,000.

The Commissioner of Internal Revenue, upon examination of the said return for the year 1934, increased the total gifts to $171,426, reduced the exclusions to $15,000, and increased the net gifts to $106,426. This resulted in the assessment of an additional tax for the year 1934 of $819.44. The plaintiff paid this additional tax, together with interest of $76.24 (or a total of $895.68) to the said Collector of Internal Revenue at Chicago, Illinois, on November 11, 1936.

The Commissioner of Internal Revenue, upon examination of the said return for the year 1935, increased the net gifts for 1934 to $106,426, and the total net for 1934 and 1935 to $488,426, and, on that basis, assessed an additional tax for 1935 of $940. The plaintiff paid this additional tax, together with interest of $31.06 (or a total of $971.06), to the said Collector on November 11, 1936.

On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of $1,569.44, plus interest, of the gift tax paid by her for the year 1934.

On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of $2,065.00, plus interest, of the gift tax paid by her for the year 1935.

Both of the said claims for refund were duly forwarded to the Commissioner of Internal Revenue and were considered by the Commissioner on the merits and were eventually disallowed or rejected. The notice of disallowance or rejection on both claims was mailed to the taxpayer by registered mail, as required by Section 1103(a) of the Revenue Act of 1932, on December 10, 1936.

The Commissioner determined that plaintiff was entitled to one rather than to two exclusions of $5,000 each under Section 504(b) of the Gift Tax Act because of the assignment of policy C, and that she was entitled to no exclusion, rather than to three, because of the assignment of policy D.

Plaintiff's gift tax for the years 1934 and 1935 is found to be correctly computed as follows:

1934	
Total Gifts	$171,426
Less exclusions	35,000
	$136,426
Exemption	50,000
Net Gifts	$ 86,426
Tax	$ 2,946.30
Interest from March 15, 1935 to September 16, 1935	$ 88.87
1935	
Total net gifts for year	$382,000
Gifts for preceding year	86,426
Total net gifts	$468,426
Tax	$ 43,666.95

Plaintiff overpaid her gift tax for the year 1934 in the amount of $1,096.39, and paid interest on a part of the said overpayment in the amount of $7.82 on September 16, 1935, and in the amount of $76.24 on November 11, 1936. Plaintiff overpaid her gift tax for the year 1935 in the amount of $1,355.42, and paid interest on a part of the said overpayment in the amount of $31.06 on November 11, 1936, making a total overpayment for the years 1934 and 1935 of $2,566.93.

89 **Conclusions of Law.**

The value of a gift of a fully paid life insurance policy should be based upon the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made.

The value of each of the insurance policies upon the date of the assignment is found to have been $42,856.50.

Where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of $5,000 allowable under Section 504(b) of the Revenue Act of 1932, is the beneficiaries rather than the trust.

Plaintiff is entitled to judgment against defendant for $2,566.93 together with interest.

Enter Philip L. Sullivan,
Judge.

90 And afterwards, to wit, on the 29th day of June, A. D. 1939, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit: Judgment—

91 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

JUDGMENT.

This cause having come on for trial before the Court without a jury and the Court having entered findings of fact and conclusions of law and having filed its opinion herein and being fully advised in the premises,

It Is Hereby Ordered And Adjudged that the Plaintiff Mary M. Ryerson have judgment in her favor against the Defendant United States of America in the sum of $2,566.93 plus interest upon the following amounts:

From September 16, 1935		
on overpayment for 1934 of	$276.95	
on interest paid on said overpayment of	7.82	$284.77
From March 5, 1936		
on overpayment for 1935	$415.42	415.42
From November 11, 1936		
on deficiency payment for 1934 of	$819.44	
on interest paid on said overpayment of	76.24	
on deficiency payment for 1935 of	940.00	
on interest paid on such payment of	31.06	1,866.74
		2,566.93

92 at 6% per annum in accordance with section 808 of the Revenue Act of 1936.

Philip L. Sullivan,
United States District Judge.

93 And on, to wit, the 29th day of September, 1939, came the Plaintiff by her attorneys and filed in the Clerk's office of said Court her certain Notice of Appeal in words and figures following, to wit: Filed Sept. 1939

94 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Mary M. Ryerson,
Plaintiff,
vs.
United States of America,
Defendant.
} At Law
No. 47078.

NOTICE OF APPEAL.

Notice is hereby given that Mary M. Ryerson, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on June 29, 1939 in so far as said judgment does not award to said plaintiff the full sum of $3,764.24, plus interest, prayed for in the complaint.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Appellant,
Mary M. Ryerson.

Dated at Chicago, Illinois this 29th day of September, 1939.

Filed Sept. 29, 1939. 95 And on, to wit, the 29th day of September, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain BOND ON APPEAL in words and figures following, to wit:

96 Know All Men by These Presents:

That we, Mary M. Ryerson, as principal, and The Fidelity and Casualty Company of New York, as surety, are held and firmly bound unto United States of America in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said United States of America, its attorneys, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of September, 1939.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, between Mary M. Ryerson, plaintiff, and United States of America, defendant, a final judgment was rendered, and the said plaintiff has filed with said Court a notice of appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the said judgment.

Now, therefore, the condition of the above obligation is such, that if the said Mary M. Ryerson shall make payment of costs if her said appeal is dismissed or the said judgment affirmed, or of such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void; otherwise to remain in full force and virtue.

Mary M. Ryerson (Seal)
The Fidelity and Casualty Company of New York,
By Frank J. Soukup, (Seal)
Attorney. (Seal)

Sealed and delivered in presence of:
H. E. Arthar.

(Jurat here follows, not copied.)

99 And on, to wit, the 9th day of October, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain Statement of Point, etc. in words and figures following, to wit: Filed Oct 1939

100 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

STATEMENT OF THE POINT ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Appellant, Mary M. Ryerson, hereby states that in her appeal to the Circuit Court of Appeals of the United States for the Seventh Circuit from the final judgment entered in the above entitled cause on June 29, 1939, she intends to rely on the following point:

The District Court erred in concluding:

"The value of a gift of a fully paid life insurance policy should be based upon the price that any person of the same age, sex and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made.

"The value of each of the insurance policies upon the date of the assignment is found to be $42,656.50."

and in failing to conclude:

"The value of paid-up insurance policies, when assigned, is, for gift tax purposes, equal to the cash surrender value thereof on the date of their assignment when no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing upon them, or otherwise, than that value.

"The value of insurance policies numbered 82A-NW-50 and 82B-NW-50 was $40,696.50 each and the value of 101 insurance policies numbered 110A-NW-50 and 110B-NW-50 was $40,286 each, on the dates of their respective assignments."

Dated at Chicago, Illinois this 9th day of October, 1939.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Appellant, Mary M. Ryerson.

Filed Sept. 29, 1939. 97 And on, to wit, the 29th day of September, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

98 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Mary M. Ryerson,
Plaintiff,
vs.
United States of America,
Defendant.
} At Law.
No. 47078.

NOTICE OF APPEAL.

Notice is hereby given that the United States of America, defendant in the above-named case, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from so much of the final judgment order entered in the above-entitled cause on June 29, 1939, as finds in favor of the plaintiff herein on a certain issue and directs and awards judgment in favor of the plaintiff and against the defendant, the United States of America, in the sum of $2566.93, plus interest, which said award is directed pursuant to the conclusion of the Court that where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of $5,000 allowable under Section 504(b) of the Revenue Act of 1932, is the beneficiaries rather than the trust.

William J. Campbell,
William J. Campbell,
United States Attorney.
David L. Bazelon,
David L. Bazelon,
Assistant United States Attorney.

102 And afterwards, to wit, on the 7th day of November, A. D. 1939, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit:

103 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

ORDER.

On motion of attorneys for plaintiff, It Is Hereby Ordered that the originals of Exhibits 1 and 2 attached to the stipulation of facts herein, consisting of photostatic copies of two insurance policies, be sent by the Clerk of this court to the Circuit Court of Appeals for the Seventh Circuit in lieu of copies thereof.

Enter:

Philip L. Sullivan,
Judge.

Dated: .....

104 And on, to wit, the 9th day of October, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain Notice of filing Designation of Portions of Record, etc. in words and figures following, to wit:

105 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

NOTICE OF FILING APPELLANT'S DESIGNATION OF THE PORTIONS OF THE RECORD, THE PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL, AND STATEMENT OF THE POINT ON WHICH APPELLANT INTENDS TO RELY ON APPEAL, AND PROOF OF SERVICE.

To—William J. Campbell, Esq., United States District Attorney, United States District Courthouse, Chicago, Illinois.

You Are Hereby Notified that on October 9, 1939, the appellant, Mary M. Ryerson, will file with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, appellant's designation of the portions of the record, the proceedings and evidence to be contained in the record on appeal, and statement of the point on which appellant intends to rely on appeal; and that a true copy of each of said papers is herewith served upon you.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for appellant, Mary M. Ryerson.

I hereby acknowledge receipt on this 9th day of October, 1939, of a copy of the above and foregoing notice, and a copy of each of the papers therein referred to.

William J. Campbell,
United States District Attorney.

106 And on, to wit, the 9th day of October, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain Designation of Portions of the Record, etc. in words and figures following, to wit:

107 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Oct. 1939.
* * (Caption—47078) * *

APPELLANT'S DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Mary M. Ryerson, puruant to notice of appeal filed by her in the above entitled cause on September 29, 1939 and pursuant to the Federal Rules of Civil Procedure, hereby designates the following as the portions of the record, proceedings and evidence in the above entitled cause to be contained in the record on said appeal:

Date of Filing Description of Papers

1938

1. April 12 Complaint.
2. April 18 Affidavit of Service.
3. July 11 Answer.

1939

4. January 5 Stipulation of Facts.
5. March 31 Opinion.
6. June 29 Supplemental Opinion.
7. June 29 Findings of Fact and Conclusions of Law.
8. June 29 Direction for the entry of Judgment.
9. June 29 Judgment.

Dated at Chicago, Illinois, this 9th day of October, 1939.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Appellant, Mary M. Ryerson.

108 And on, to wit, the 13th day of October, 1939, came the Defendant-Appellee by its attorneys and filed in the Clerk's office of said Court its certain Designation of Contents of Record on Appeal in words and figures following, to wit:

Filed Nov. 13, 1939. 109 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

APPELLEE'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Comes now the United States of America, defendant in the above-entitled cause, by William J. Campbell, United States Attorney for the Northern District of Illinois, and designates that the complete record and all proceedings and evidence in the District Court in the above-entitled case be included in and contained in the record on appeal.

Dated at Chicago, Illinois, this ..... day of October, A. D. 1939.

William J. Campbell,
William J. Campbell,
United States Attorney.

Received a copy of the above and foregoing Designation of Contents of Record on Appeal, this 13th day of October, 1939.

Bell, Boyd & Marshall,
Bell, Boyd and Marshall,
Attorneys for Plaintiff.

110 Northern District of Illinois, } ss:
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled Mary M. Ryerson *vs.* United States of America, No. 47078, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this Eighth day of November, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, Seventh Circuit.

Filed Nov. 1939.

Mary M. Ryerson
vs.
United States of America. } Nos. 7133-7134.

STIPULATION.

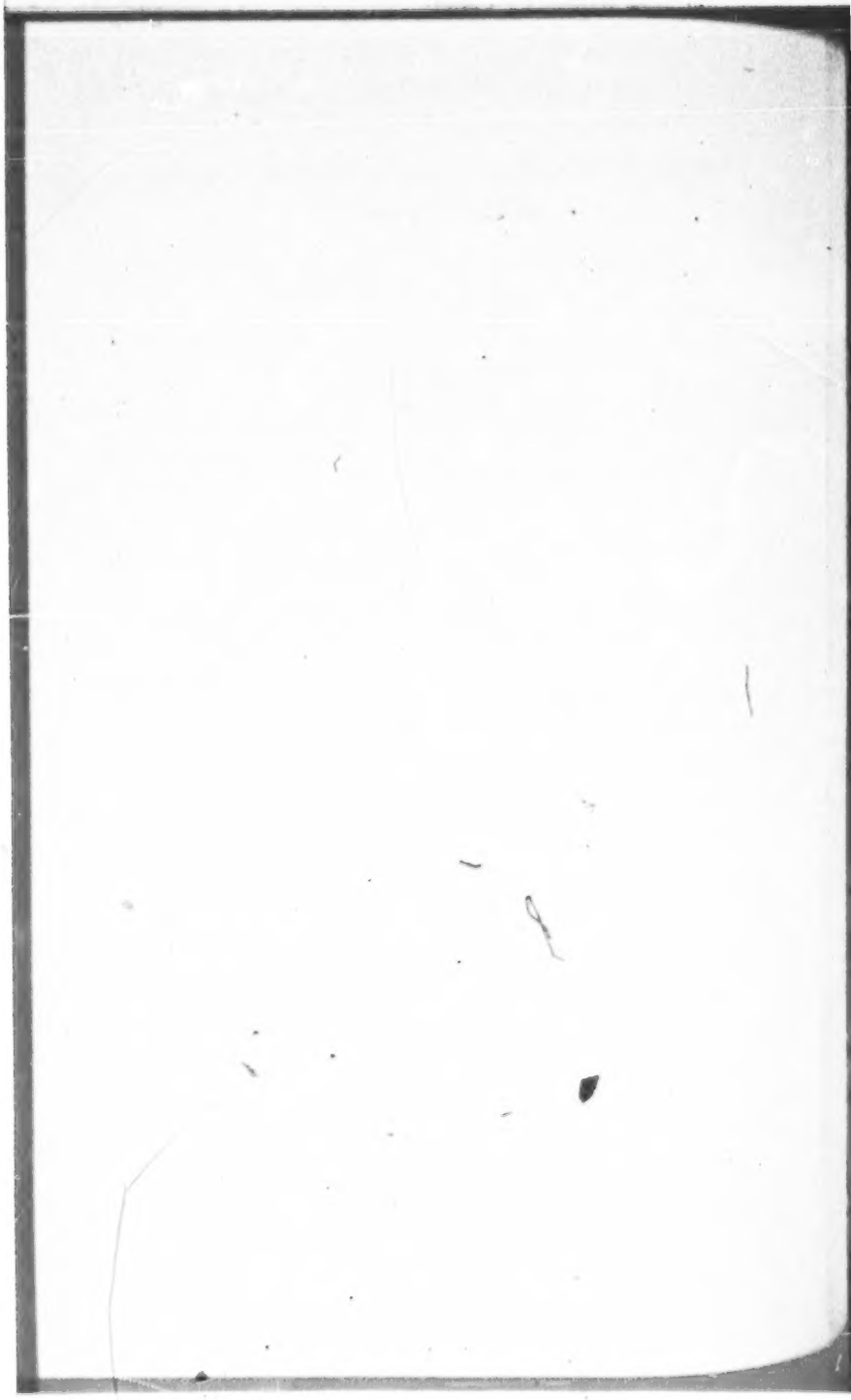
It is hereby stipulated between the parties hereto, by their respective attorneys, that the Clerk shall apportion equally between the parties the cost of printing the record in their respective appeals.

William J. Campbell,
Attorney for Defendant.

Wm. N. Haddad,
Attorney for Plaintiff.

Dated: November 13, 1939.

Endorsed: In the United States Circuit Court of Appeals. * * (Caption—7133-4) * * Stipulation. U. S. C. C. A. 7. Filed Nov. 15, 1939, Frederick G. Campbell, Clerk.



And afterwards, to wit, on the 20th day of December, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Wednesday, December 20, 1939.

Before Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 7133)

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellee in this cause, and move for their substitution as parties appellees.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellees in this cause in the place and stead of Mary M. Ryerson, Deceased.

And on the same day, to wit, on the 20th day of December, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

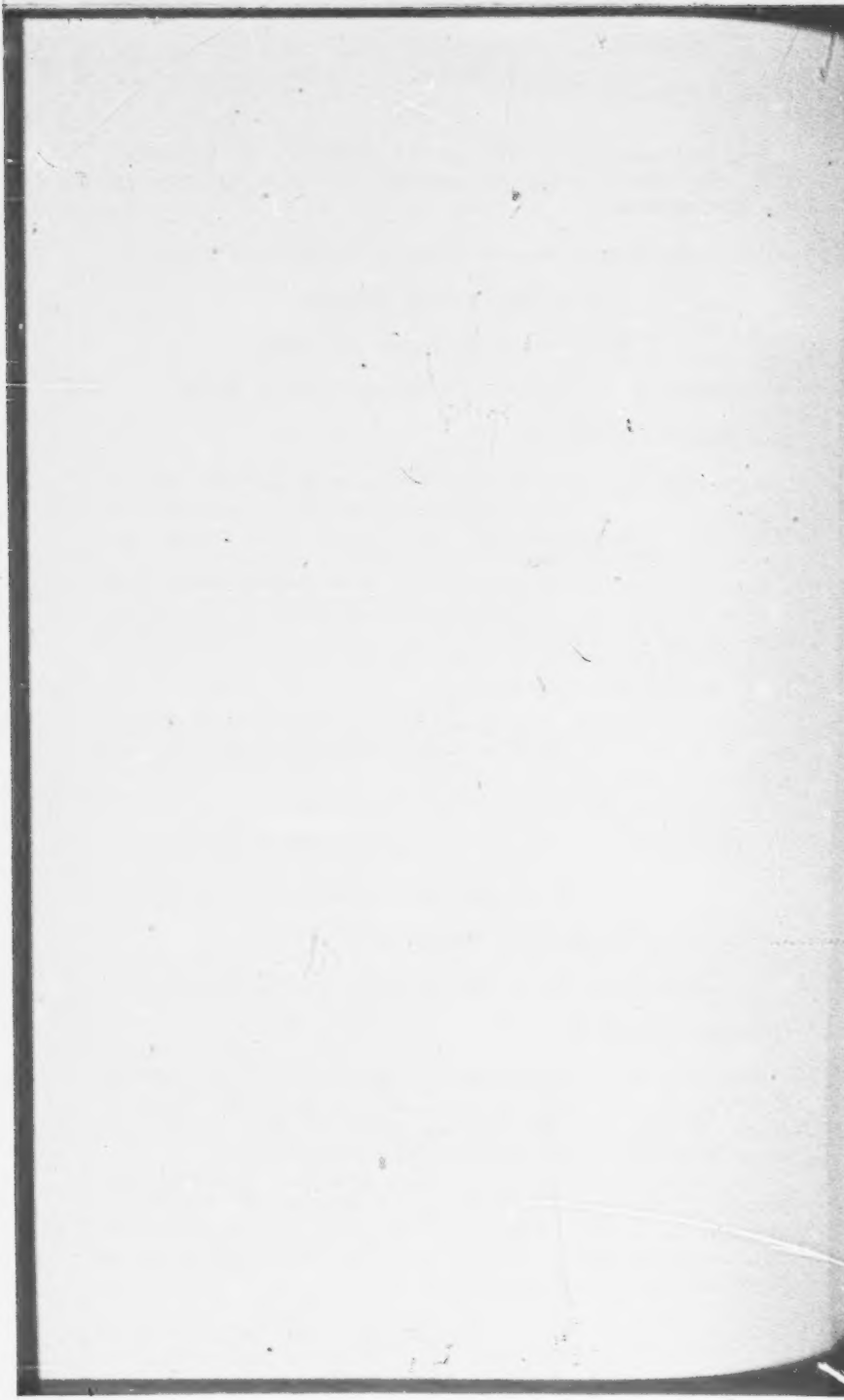
Wednesday, December 20, 1939.

Before Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 7134)

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellant in this cause, and move for their substitution as parties appellants.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellants in this cause in the place and stead of Mary M. Ryerson, Deceased.



UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the twenty-seventh day of December 1939 in the following entitled causes: 7133, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellees, vs. United States of America, defendant-appellant; 7134, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellants, vs. United States of America, defendant-appellee; as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of September A. D. 1940.

[SEAL] KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

7133

MARY M. RYERSON, PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

7134

MARY M. RYERSON, PLAINTIFF-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

And to-wit: On the twentieth day of December, 1939, the following proceedings were had and entered of record, to-wit:

Wednesday, December 20, 1939

Court met pursuant to adjournment

Before: Hon. WALTER E. TREANOR, Circuit Judge.

7133

MARY M. RYERSON, PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellee in this cause, and move for their substitution as parties appellees.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellees in this cause in the place and stead of Mary M. Ryerson, Deceased.

7134

MARY M. RYERSON, PLAINTIFF-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellant in this cause, and move for their substitution as parties appellants.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellants in this cause in the place and stead of Mary M. Ryerson, Deceased.

And afterwards, to-wit: On the ninth day of July, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7133 and 7134. October Term, 1939, April Session, 1940

THE UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

vs.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLEES

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLANTS

vs.

THE UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

July 9, 1940

Before TREANOR and KERNER, Circuit Judges, and LINDLEY, District Judge.

TREANOR, Circuit Judge: This action was brought in the District Court under the Tucker Act[1] to recover gift taxes for the years 1934 and 1935. The taxes were assessed by the Commissioner of Internal Revenue and have been paid by the taxpayer. Recovery is sought on the ground that the taxes were wrongfully exacted.

Two questions are presented on appeal. One question is whether in case of a gift under a trust agreement only one exclusion of $5,000 is allowed for the trust as the donee or whether an exclusion is allowed for each of the beneficiaries as a donee; and the second question involves the measure of value of four fully paid life-insurance policies, the assignments of which constituted the gifts in question.

The facts are not in dispute and will be indicated sufficiently in the course of our discussion.

In respect to the method of determining the value of a gift of a fully paid life-insurance policy the District Court stated

[1] U. S. C. A., title 28, Sec. 41 (20).

as a conclusion of law that the value "should be based upon the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made."

The plaintiffs [4] contend that the District Court was in error in stating such conclusion of law and it is their contention that the proper measure of value of a paid up life insurance policy is the cash surrender value.

The only statutory provision which is relevant reads as follows: "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." [3] The foregoing provision is so general in its terms as to require some interpretative regulation. The act was passed in 1932 and in 1933 the following treasury regulation was adopted: "The irrevocable assignment of a life insurance policy * * * constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift." In 1936 a new regulation was issued which accords with the ruling of the district court and the contention of the United States.

In Helvering v. Winmill [4] the Supreme Court stated the generally recognized rule that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." In Helvering v. Cronin [5] the Circuit Court of Appeals for the Eighth Circuit discussed the 1933 regulation, and the following pertinent excerpt is from its opinion:

"If the gift tax is to be computed by the original regulation of 1933, the taxpayer's return was correct; if by the regulation of 1936, the Commissioner is right. If the regulation of 1933 were invalid because inconsistent with the statute, the 1936 regulation would be applicable * * *. It is not claimed, however, that the 1933 regulation is invalid. It had the approval of Congress by the reenactment without material change of section 506 of the Revenue Act of 1932 in the Revenue Acts of 1934 and 1935. That regulation, therefore, had the effect of law * * *. Since it was in effect on the date of the gift it rules the determination of the value of the policies. The 1936 regulation can not be given retroactive effect. * * *"

The Courts of Appeals in the Third, Fourth, and Fifth Circuits are in accord with the reasoning and holding of the Eighth Circuit in Helvering v. Cronin.

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[3] The suit was instituted by the taxpayer who died during the pendency of the appeals. Her executors were substituted as parties by order of this Court.
[3] See 506 Revenue Act of 1932; U. S. C. A. Title 26, Sec. 555; 47 Stat. 169, 248.
[4] 305 U. S. 79.
[5] 106 Fed. 2nd 907, 909.

When the Commissioner, with the approval of the Secretary, promulgates an administrative regulation which the Commissioner is authorized by the Revenue Act to promulgate, such regulation, by force of the Act of Congress, has the effect of law. In the Gift Tax Act, Congress does not designate the factors which shall be taken into consideration in determining the amount of a gift. Congress merely provides that if the gift is made in property, the value thereof shall be considered the amount of the gift. There is no fixed, general rule of law which determines value of property. The factors entering into the concept of value vary with types of property and with the purpose for, or use to be made of, the valuation. Likewise, the relative weight to be attached to the different factors may vary. In view of the very general and indefinite standard fixed by Congress for the determination of the amount of the gift of property it became a practical necessity for the Commissioner to designate some factual test of value which could be used to fix the amount of the gift in terms of money. If the test, or measure of value, which was adopted by the Commissioner in 1933 fell within the standard fixed by the Act, and if it afforded a reasonably accurate measure of the monetary value of the gift, the regulation embodying such test or measure was authorized by Congress and had the force of law. The fact that some other test or measure might have been reasonable, or the fact that the regulation embodying the first measure might later be modified and still represent a valid exercise of power by the Commissioner, does not in any way vitiate the validity and the binding force of the first regulation during the period that it was officially recognized and enforced.

We are not concerned with a regulation which embodies an erroneous construction of an Act of Congress and which, therefore, would be invalid. In such a case a substituted regulation embodying the correct construction would not represent a change in the law but would constitute a correct expression of the law. Nor do we have an example of an administrative construction by administrative practice, in which case, if the construction is reasonable, courts will give great weight to the practical construction as evidencing the legislative intent.

The United States Government urges that "The cash surrender value of the policies is not their fair market value for gift tax purposes"; and states that the fair market value of the fully paid life insurance policies is not the surrender value but the amount which would have to be paid to duplicate the policies on the date of the gift. But the cost of duplication is not understood generally to measure the "fair market value" of property. The cost of duplication affords some evidence of what a "willing buyer"

would pay and may be considered along with other evidence; but it is not the measure of the fair market value of property.

We are of the opinion that, for purposes of evaluating a fully paid life insurance policy, the common test of "the fair market price or value" has no significance. In view of the peculiar type of property involved, the problem for the Commissioner was to devise a fair and appropriate measure of value which reasonably could be considered the amount of the gift. We are of the opinion that the cash surrender value constitutes a fair measure of the value of a fully paid life insurance policy for gift tax purposes. The parties stipulated that "no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values." The District Court found the foregoing to be a fact. If "fair market price" has any significance for the present question it would seem that the cash surrender value more nearly conforms to the fair market value test than does the cost of duplication. Such was the thought expressed by the Board of Tax Appeals in Hains *v.* Commissioner.[6]

"The fact that insurance companies assume risks and make a charge for doing so which reduces the salable value of the contract from the moment of its issue is of no importance. The true test of value is what such contracts can be sold for, not what it will cost to turn around and buy another one from the insurance company which chooses to make a service charge for issuing another."

The United States urges that even if the regulation of 1933 be applied, consideration has not been given to that part of the regulation which requires that there be added to the net cash surrender "the prepaid insurance adjusted to the date of the gift." We think it is apparent that the requirement of "prepaid insurance" applies to policies upon which current premiums are still being paid. In the case of a fully paid insurance policy the cash surrender value reflects the increased value of the policy due to the fact that the insurance is fully paid up.

The United States also argues that the cash value is only the liquidation value of the investment of the policy, and does not include the value of its protection feature. But "the protection in the face amount of the policy payable at * * * the insured's * * * death" represents merely future accretion to the present surrender value of the policy which the assignee will receive if he retains, until the death of the insured, the ownership of what may be designated with reasonable accuracy the invested present surrender value. Making due allowances for costs of

[6] 37 B. T. A. 1013, affirmed in 104 Fed. 2nd 854.

administration which are properly allocable to an insurance policy, the cash surrender value at any particular time is approximately the present worth of the face of the policy as of the "expectancy" date of the death of the insured. Actually, in any given case, there may be considerable variation from the average life expectancy which is taken as the basis of computation. That, however, is a possibility which cannot be considered in fixing the value of an insurance policy during the lifetime of the insured. In short, in computing values of contracts of insurance we cannot ignore the basic data upon which all such contracts are predicated and which enter into all determinations of values which are fixed by the contract.

We conclude that the 1933 regulation established a fair measure of the value of the gift property, consisting of fully paid-up insurance policies; that under the Revenue Act the Commissioner possessed the authority to make such regulation and that such regulation had the force of law during the taxable years in question and controlled the determination of the amount of the gifts.

Section 504 (b) provides that in the case of gifts made to any person by the donor during the calendar year "the first $5,000 of such gifts to such person shall not * * * be included in the total amount of gifts made during such year." In the instant case the insurance policies were assigned to trustees for the benefit of more than one beneficiary under each trust and the precise question for consideration is whether there shall be one exclusion for each trust, on the theory that the gift is made to the trustee as donee, or whether there shall be an exclusion of the "first $5,000" for each of the beneficiaries under the trust. The District Court stated as its conclusion of law that "Where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of $5,000 allowable under Section 504 (b) of the Revenue Act of 1932, is the beneficiaries rather than the trust." The defendant, United States of America, contends that the District Court was in error in so holding.

The United States urges that its position is sustained by the decision of this Court in Commissioner v. Wells.[1] In that case the taxpayer had created a trust for the benefit of each of his three children. Each of the trust instruments directed the trustee to collect the income from the trust corpus and to accumulate the net income until the child named therein should attain the age of twenty-one years, or until death if the child should die before that time. Upon reaching the age of twenty-one years each child was to receive the trust income until he reached the age of thirty, or until the death of his mother, who was trustee,

[1] 88 Fed. 2nd 339.

whichever event occurred first, and then each child was to receive the corpus. In his tax return the taxpayer reported the gifts and deducted therefrom $5,000 from each trust. The Commissioner disallowed the deduction of the $5,000 for each on the ground that the gifts were of future interests, in respect to which no exclusion or deduction is allowed. Upon taxpayer's petition for a redetermination, the Board of Tax Appeals held that the gifts were not of future interests and that there was no deficiency. This Court affirmed the decision of the Board.

In reaching its decision in the foregoing case this Court called attention to the statutory provision that "the term 'person' means an individual, a trust or estate, a partnership or a corporation"; and the Court concluded that each of the three trusts was a person capable of accepting the gifts in question as a donee. Perhaps the statement in the opinion of this Court which is most significant for our present purposes is quoted by the United States in its brief:

"Under the undisputed evidence all the elements of a consummated gift were present. With respect to the donor the transfer was not in futuro. He thereby devised himself of all vestige of title, and no future act on his part could modify or abrogate his act. Likewise, the donees were competent to accept the gifts, and they did so immediately. True, they were trusts, but they were no different from persons, for the Act so states. They took immediate title to and possession of all the property from the donor; they put it to instant use for the directed purpose of building up an estate for the ultimate and contingent beneficiaries, who were named specifically. The fact that those beneficiaries did not come into possession of the corpus until some time in the future, dependent upon some contingency, does not make the donor's act any the less a completed transfer to the trustees. The fact must not be overlooked that the Act involved relates to transfers and not receipts."

By the terms of Section 504 (b) it is recognized that there may be a gift of future interests in property as well as a gift of present interest. There must be both a donor and a donee in order to have a completed gift, although as suggested in the Wells case, it is the transfer of property which is taxed and not the receipt. But there is no gift in the absence of an identifiable donee who receives the property. In the Wells case this Court was confronted with the contention by the United States that because of postponement of enjoyment by the beneficiaries, the gifts were gifts of future interests in property and that, as a consequence, the $5,000 exclusion provided for by the Gift Tax Act for gifts, other than gifts of future interests, was not available. This Court expressed some doubt about the meaning of the regu-

lations which defined future interests, but that question became immaterial since, in the opinion of the Court, the donees were the trusts.

Plaintiffs suggest that in the Wells case "with an equal number of beneficiaries and trusts, the question was of no consequence." And the plaintiffs add that "in the case of one trust for several beneficiaries, or several trusts for one beneficiary, the distinction is vital." It is true that in the Wells case the decision of this Court did not directly decide whether the number of exemptions would be limited to one for each trust or would be determined by the number of individual beneficiaries of each trust. But the conclusion of this Court, and its holding, that an exclusion of $5,000 was permissible under the facts of the case, rested upon the preliminary holding that each trust was a person and, as such person, was the donee of a gift of a present interest in property which had been transferred to it. We cannot ignore the plain implications of the statements of this Court in the Wells case to the effect that in "respect to the donor the transfer was not in futuro"; that "the donees were competent to accept the gifts, and they did so immediately"; that "they (donees) were trusts, but they were no different from persons, for the Act so states"; that "the fact that those beneficiaries did not come into possession of the corpus until some time in the future, dependent upon some contingency, does not make the donor's act any the less a completed transfer to the trustees."

We conclude that for purposes of Section 504 (b) each trust in the instant case was the person to whom the gift was made and that in respect to each gift to the trust only one exclusion of $5,000 is permissible, regardless of the number of beneficiaries of the trust.

In our opinion the District Court erred both in holding that the value of the gift of the fully paid life insurance policy should be based upon the cost of the duplication of the policy at the time of the gift, and in holding that "where a gift is made in trust, the donee of the gift, for the purpose of determining the number of exclusions of $5,000 allowed under Section 504 (b) of the Revenue Act of 1932, is the beneficiary rather than the trust."

Since there is no dispute about the facts, the judgment of the District Court is reversed and the cause remanded with directions to the District Court to restate is conclusions of law as required by his opinion and to enter judgment in conformity therewith.

Judgment reversed.

LINDLEY, District Judge, dissenting in part: I am of the opinion that the District Court was correct in its conclusion that where a gift is made in trust, for the purpose of determining the number of exemptions allowable under the gift tax law, the donee is

the beneficiary rather than the trust. It seems to me that any other construction does violence to the congressional intent and promotes evasion of taxes. If the trust and not the beneficiary is the donee, then a donor may, by creating ten separate trusts, that is, creating ten trusts in ten separate persons as trustees and by designating the same beneficiary in each trust, give $50,000 to one donee without payment of any gift tax. This result, I think, is not within the express purport or implication of the legislation. Rather the Congress meant to prevent tax-free donations in excess of $5,000 in any recipient.

A true Copy:
Teste:

_____,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the ninth day of July 1940 the following further proceedings were had and entered of record, to-wit:

Tuesday, July 9, 1940

Court met pursuant to adjournment

Before: Hon. WALTER E. TREANOR, Circuit Judge; Hon. OTTO KERNER, Circuit Judge; Hon. WALTER C. LINDLEY, District Judge.

7133

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLEES

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with

directions to restate its conclusions of law as required by the opinion of this Court and to enter judgment in conformity therewith.

7134

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with directions to restate its conclusions of law as required by the opinion of this Court and to enter judgment in conformity therewith.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewriteen pages contain a true copy of proceedings had and papers filed (excepting briefs of counsel, motion relative to substitution of parties, stipulation relative to costs of printing record, stipulation and order relative to consolidation of causes, appearances of counsel, stipulation and motion and orders relative to time for filing petition for rehearing and order taking cause under advisement) in the following entitled causes: 7133, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellees, vs. United States of America, defendant-appellant; 7134, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellants, vs. United States of America, defendant-appellee; as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the

Seventh Circuit, at the City of Chicago, this thirteenth day of September A. D. 1940.

[SEAL]

KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1940

Supreme Court of the United States

No. 494, October Term, 1940

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 486.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 495, October Term, 1940

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 494.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U.S. GOVERNMENT PRINTING OFFICE: 1940

No. 494

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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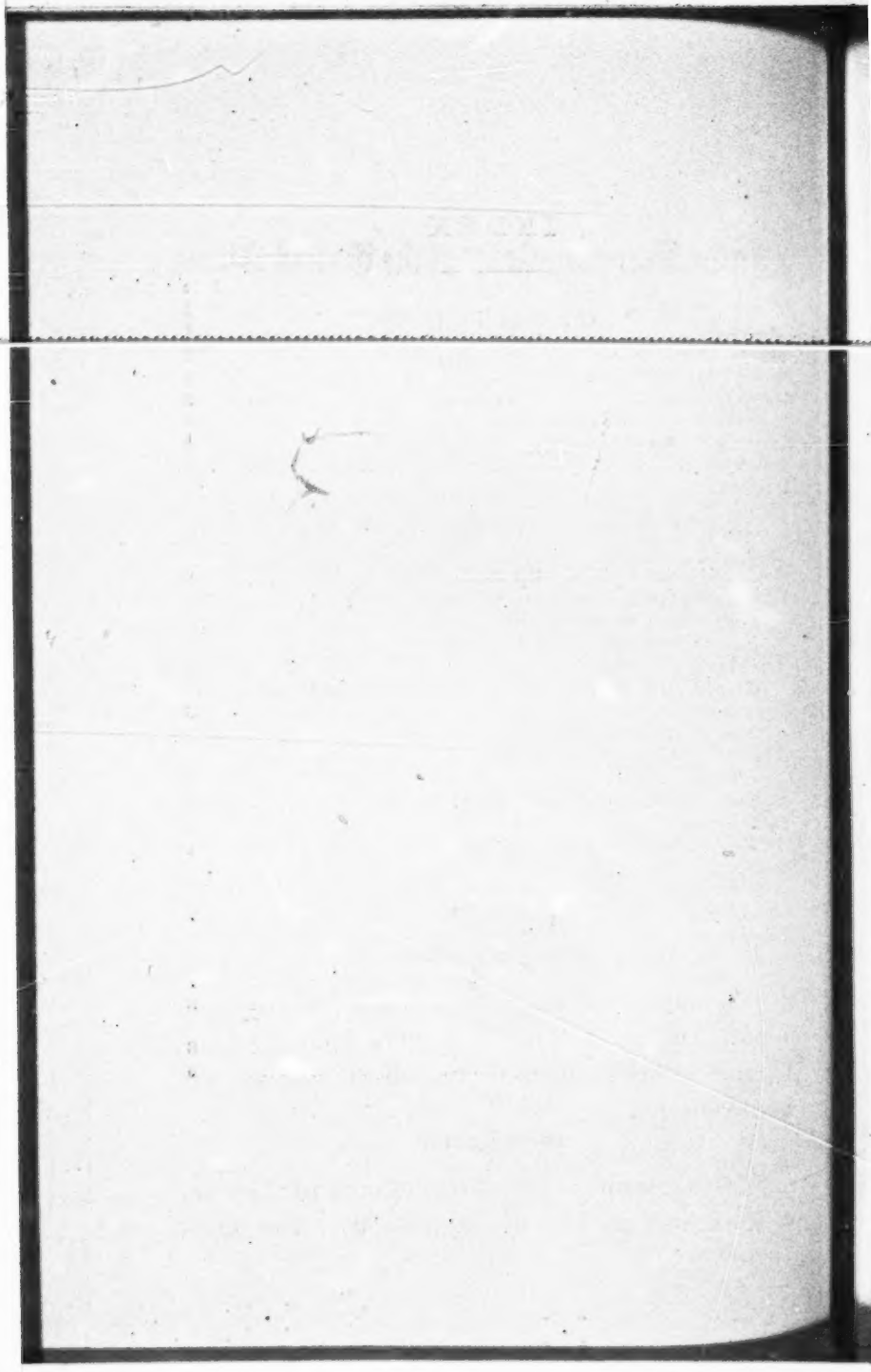

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on July 9, 1940.

OPINIONS BELOW

The opinion of the District Court (R. 61–71) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90–97) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals were entered on July 9, 1940 (R. 98). The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

In computing the gift tax, is the value of the gift of a fully paid life insurance policy (a) the amount of the cash surrender value of the policy or (b) the cost of obtaining a like policy on the date of the gift?

STATUTE AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*, pp. 7–10.

STATEMENT

In 1928 and 1929, the taxpayer[1] purchased two single premium insurance policies on her own life in the face amount of $100,000 each (R. 71). Taxpayer was 72 years old when the first policy was issued and 73 when the second was issued (R. 38, 39, 41, 45, 51, 58). In December, 1934, when the taxpayer was 79 years old, she had each of the policies divided into two fully paid up policies, each in the amount of $50,000 (R. 38, 71).

In December, 1934, the taxpayer assigned one of the policies to one individual, a second to another

[1] The taxpayer died during the pendency of the appeal to the Circuit Court. The respondents herein, as executors of her estate, have been substituted as parties herein. (R. 88–89.)

individual, a third to trustees under a trust agreement, and a fourth to other trustees under another trust agreement (R. 71–72).

The aggregate cash surrender value of the four policies on the dates they were assigned as gifts was $161,965 (R. 72). If the insurance company which had issued the policies had written similar policies on the date of assignment, on the life of a person of the then age of the taxpayer, it would have charged $42,856.50 for each policy, or an aggregate of $171,426 for the four policies (R. 72).

In the computation of the taxpayer's gift tax liability for 1934 and 1935, she reported the assignment of these policies as gifts in the amount of their cash surrender value at the time of the assignment, or an aggregate of $161,965. In the final determination of the taxpayer's gift tax liability for 1934 and 1935, the Commissioner of Internal Revenue increased the value of the gift of the policies to $171,426, or the cost of duplicating the policies on the date of the assignment (R. 72, 73).

The deficiency in gift tax for 1934 and 1935, resulting from this determination, was paid and this suit was brought for the recovery of that amount (R. 73).

The court below, reversing the District Court, held that the cash surrender value of the policies was to be used in determining the amount of the

gift, rather than the cost of duplicating the policies on the date of the gift (R. 90–94).[2]

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the tax on the gifts of the insurance policies here involved was to be based on the cash surrender values on the date of the gifts and not on the cost of duplicating the policies.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is probably in conflict with *Guggenheim* v. *Rasquin*, 110 F. (2d) 371 (C. C. A. 2d), pending on petition for certiorari, No. 92, October Term, 1940, and *Commis-*

[2] The second question before the court related to the number of $5,000 exclusions allowable under Section 504 (b) of the Revenue Act of 1932 with respect to the taxpayer's gifts in trust. The Circuit Court of Appeals reversed the District Court and decided this question in favor of the Government, holding that only one such exclusion was allowable with respect to each gift in trust, and that the number of such exclusions was not to be determined by the number of beneficiaries of the trusts. This portion of the decision is in conflict with *Pelzer* v. *United States*, 31 F. Supp. 770 (C. Cls.), petition for certiorari filed September 3, 1940, No. 393; *Welch* v. *Davidson*, 102 F. (2d) 100 (C. C. A. 1st); *Rheinstrom* v. *Commissioner*, 105 F. (2d) 642 (C. C. A. 8th); *Robertson* v. *Nee*, 105 F. (2d) 651 (C. C. A. 8th); *McBrier* v. *Commissioner*, 108 F. (2d) 967 (C. C. A. 3d); *Early* v. *Reid* (C. C. A. 4th), decided August 7, 1940, not officially reported but found in 1940 Prentice Hall, Vol. 4, par. 62,826. We have been advised that respondents intend to file a cross petition for a writ of certiorari on this question.

sioner v. *Powers* (C. C. A. 1st), decided July 16, 1940, not officially reported but found in 1940 Prentice Hall, Vol. 4, par. 62,785. The Government has filed a memorandum not opposing the taxpayer's petition for certiorari in the *Guggenheim* case.[3]

There is one factual difference between this case and the *Guggenheim* and *Powers* cases. The policies here involved were assigned as gifts several years after the original policies from which they were derived had been issued. In the *Guggenheim* case, the policies were assigned as gifts immediately upon their issuance. In the *Powers* case, the policies were assigned at periods after they were issued varying from 26 to 35 days. Although the court in the *Guggenheim* case purported to recognize such distinction (110 F. (2d) at 373), it nevertheless expressly stated that it was in accord with the decision reached by the District Court in this case in favor of the Government (110 F. (2d) at 374). Moreover, the decision of the court below apparently was not based in any way on the fact that the policies here involved were assigned as gifts some time after the original policies were issued.

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[3] The question here involved has been decided against the Government in *Commissioner* v. *Haines*, 104 F. (2d) 854 (C. C. A. 3d); *Helvering* v. *Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Helvering* v. *Bryan*, 109 F. (2d) 430 (C. C. A. 4th).

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

OCTOBER 1940.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * * [U. S. C., Title 26, Sec. 550.]

Treasury Regulations 79 (1933 Ed.), promulgated under the Revenue Act of 1932:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

* * * * *

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment is a gift in the amount thereof.

* * * * *

ART. 19. *Valuation of property.*—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. * * *

Subdivisions (2) to (8), inclusive, of this article deal, respectively, with the valuation of real estate, stocks and bonds, interest in business; notes, secured and unsecured; intangibles; annuities, life, remainder, and reversionary interests; and tenancies by the entirety.

Treasury Regulations 79 (1936 Ed.), promulgated under the Revenue Act of 1932, as amended and supplemented by the Revenue Acts of 1934 and 1935:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an ade-

quate and full consideration in money or money's worth:

* * * * *

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

(6) If there is an irrevocable gift of a policy of life insurance and the insured thereafter pays premiums thereon, each premium payment is a gift in the amount thereof.

* * * * *

ART. 19. *Valuation of property*—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate

would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property.

* * * * *

(9) *Life insurance and annuity contracts.*—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

U. S. GOVERNMENT PRINTING OFFICE: 1948

No. 494

In the Supreme Court of the United States

OCTOBER TERM, 1940.

THE UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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OPINIONS BELOW

The opinion of the District Court (R. 61–71) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90–97) is reported at 114 F. (2d) 150.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 9, 1940 (R. 98). The petition for a writ of certiorari was filed October 9, 1940, and was granted November 12, 1940. The juris-

diction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where single premium policies of life insurance are irrevocably assigned several years after issuance, is the value thereof for gift-tax purposes the cost of obtaining like policies on the life of a person the age of the insured or the cash surrender value of the policies in the hands of the donees at the date of the gift?

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations involved are set forth in the Appendix to the Government's brief in *Guggenheim* v. *Rasquin*, No. 92, to be argued herewith.

STATEMENT

The relevant facts, as stipulated (R. 38–40) and as found by the District Court (R. 71–74), may be summarized as follows:

In 1928 and 1929, the taxpayer[1] purchased two single premium insurance policies on her own life in the face amount of $100,000 each (R. 71). Taxpayer was 72 years old when the first policy was

[1] The taxpayer died during the pendency of the appeal to the Circuit Court of Appeals. The respondents herein, as executors of her estate, have been substituted as parties (R. 88–89).

issued and 73 when the second was issued (R. 38, 39, 41, 45, 51, 58). In December 1934, when the taxpayer was 79 years old, she had each of the policies divided into two fully paid up policies, each in the amount of $50,000 (R. 38, 71).

In December 1934, the taxpayer assigned one of the policies to one individual, a second to another individual, a third to trustees under a trust agreement, and a fourth to other trustees under another trust agreement (R. 71–72). These assignments were subject to the gift tax (R. 71–72, 79).

The aggregate cash surrender value of the four policies on the dates they were assigned as gifts was $161,965 (R. 72). The insurance company which issued the policies, if it had written similar policies on the date of assignment, on the life of a person of the then age of the taxpayer, would have charged $42,856.50 for each policy, or an aggregate of $171,426 for the four policies (R. 72).

In the computation of the taxpayer's gift tax liability for 1934, she reported the assignment of these policies as gifts in the amount of their cash surrender value at the time of the assignment, or an aggregate of $161,965. In the final determination of the taxpayer's gift tax liability for 1934, the Commissioner of Internal Revenue increased the value of the gifts of the policies to $171,426, or the cost of acquiring similar policies on the life of a person the age of the taxpayer on the date of assignment (R. 72, 73).

Payment was made of the resulting deficiency in gift tax for 1934, and of a deficiency in gift tax for 1935 based on the adjustment of net gifts subject to tax for 1934 (R. 73). This suit was brought for the recovery of these amounts.

The court below, reversing the District Court, held that the cash surrender value of the policies on the date of the gift was to be used in determining the amount of the gift (R. 90–94).[1]

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the tax on the gifts of the insurance policies here involved was to be based on the cash surrender values on the date of the gifts and not on the cost of obtaining like policies on the life of a person the then age of the insured.

ARGUMENT

In December 1934, the taxpayer, then aged 79, made transfers by gift of certain single premium insurance policies purchased on her own life during 1928 and 1929. The sole question presented is whether the "value" thereof for gift tax purposes shall be considered the cash surrender value of the policies in the hands of the donees ($161,965) or the cost of purchasing similar policies on the life

[1] The second question before the Circuit Court of Appeals relating to the number of $5,000 exclusions allowable under Section 504 (b) of the Revenue Act of 1932 is presented for review in No. 495, present Term.

of a person the age of the taxpayer at the date of the gifts ($171,426).

This case differs from *Guggenheim* v. *Rasquin*, No. 92, only in that the premiums here were paid in advance of the gifts. The difference, we submit, should not be material.

1. Article 19 (9) of Regulations 79 (1936 Ed.) is in terms fully applicable to a gift of a single premium life insurance policy whether (as here) the gift is made subsequent to issuance or whether (as in the *Guggenheim* v. *Rasquin*, No. 92) the gift is made simultaneously with issuance.[3] The reasons for regarding these regulations as conclusive as to the proper method of valuing such policies for gift tax purposes are set forth in our brief in the *Guggenheim* case. These reasons, to which we respectfully refer the Court, are equally applicable here.

---

[3] Art. 19 (9), Regs. 79 (1936 Ed.), states:

"The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts."

* * * * *

"*Example:* A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured."

It may be noted, in addition, that the application of the 1936 Regulations in a case such as the one at bar results in placing a *minimum* value upon the gift. This is so because the health of the insured, at date of the gift, may have become so impaired that insurance on his life could be obtained only at a materially increased price or not at all. The value of a paid-up policy upon the life of the insured, in such event, would in fact be worth considerably more than the value of a similar policy upon the life of a healthy person the same age at the date of the gift.

2. As stated in our brief in the *Guggenheim* case, the 1933 Regulations were never intended to be applicable to gift transactions involving single-premium or paid-up policies. It is possible, however, to apply them literally, and the result in such event would be approximately the same as under the later regulations.

Article 2 (5) of the 1933 Regulations requires that the prepaid insurance adjusted to the date of the gifts be added to the cash surrender value. The total premiums were paid in 1928 and 1929 for insurance covering the life of the donor. This was "prepaid insurance" within the meaning of Article 2 (5) because a portion of the premiums was paid for insurance coverage after the dates of the gifts. Accordingly, it is necessary under the regulations to adjust the premium payment to the dates of the gifts.

The adjustment consists (1) of eliminating from the premiums the amount of the cash-surrender value created by the premium payment; and (2) deducting the premium earned prior to the gift date.[4] The gifts were made on December 18, 1934, and December 26, 1934, while the policies were issued February 27, 1928, and January 5, 1929. The amount of the premium allocable to the period prior to the gifts represents the premium already earned. The insurance covers the remaining period of the donor's life, but this factor may be supplied by the mortality tables.[5] The amount of the cash surrender value plus the adjusted premium gives the value which must be used under the 1933 Regulations.

The complicated nature of these calculations supports the view that the 1933 Regulations were never intended to be applied to single-premium policies. But if they are controlling, no computation which ignores the prepaid insurance can be sanctioned. The value under the 1933 Regulations is definitely more than the aggregate cash surrender value of $161,965, for which respondents contend, and can be ascertained upon remand. It is probably not significantly less than the value of $171,426 for which the Government contends.

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[4] See G. C. M. 13147, XIII–1 Cumulative Bulletin 358 (1934).

[5] Although the donor is now deceased, it is not permissible to depart from her life expectancy at the dates of the gifts. *Ithaca Trust Co.* v. *United States*, 279 U. S. 151.

CONCLUSION

The judgment of the Circuit Court of Appeals upon the issue of valuation should be reversed.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.

SEWALL KEY,
J. LOUIS MONARCH,
EDWARD FIRST,
Special Assistants to the Attorney General.

JANUARY 1941.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 494

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Petitioner,

vs.

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER T. FISHER,
WM. N. HADDAD,
Counsel for Respondents,
135 South La Salle Street,
Chicago, Illinois.

THE BLAKELY PRINTING COMPANY, 350 WEST JACKSON, CHICAGO

SUBJECT INDEX.

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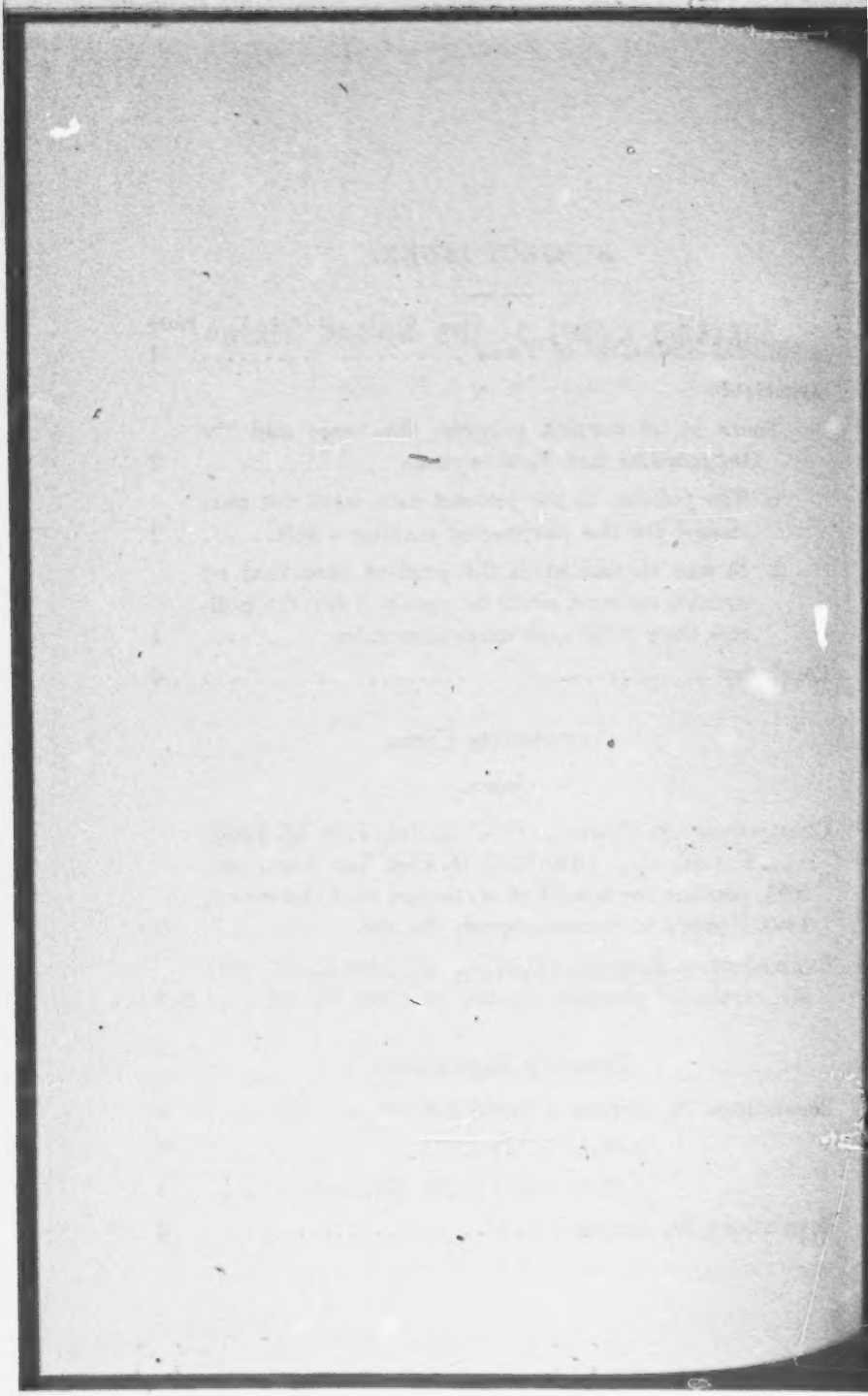

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ADDITIONAL STATEMENT OF FACTS.

There is one omission in the statement of facts in the Government's petition which respondents believe to be important. The parties stipulated (R. 38, 39), and the District Court found as a fact (R. 72), that no greater amount could have been obtained or realized on the insurance policies in question by surrendering them or borrowing on them, or otherwise, than their cash surrender values.

Argument.

Respondents submit that the Government has not shown a sufficient reason for granting its petition for certiorari. There are two essential differences of fact between the case at bar and those with which it is claimed be in conflict:[1]

1.

The first of the factual differences is conceded in the Government's petition (p. 5). In the case at bar, the insurance policies were taken out more than six years before they were assigned. There was no connection between the purchase and the gift. In the *Guggenheim* case, the policies were assigned immediately after they were issued, and in the *Powers* case they were assigned within thirty-five days after issuance.

Although, as the Government pointed out in its petition (p. 5), this distinction was not mentioned by the court below, it is inherent in the facts. It was pointed out in respondents' reply brief before the Circuit Court, and the omission of that court to mention the *Guggenheim* case may fairly be taken to indicate that it did not consider its decision to be in conflict with that case. This is supported by the manner in which the question at bar was disposed of. The decisions in this and the other cases upon the question rely, to a considerable extent, upon the Treasury Regulations in force at the time of the gifts under consideration. These regulations provided that the assignment of a life insurance policy "constitutes

1. *Guggenheim* v. *Rasquin*, (C. C. A. 2d, 1940) 110 F. (2d) 871, certiorari granted October 14, 1940, No. 92; *Commissioner* v. *Powers*, (C. C. A. 1st, July 16, 1940) .... F. (2d)...., 1940 C. C. H. Fed. Tax Serv. par. 9591, petition for a writ of certiorari filed October 7, 1940, *Powers* v. *Commissioner*, No. 486.

a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."[2] The court below held that this regulation was valid. In the *Guggenheim* case, the court thought that this provision was not intended to apply to a case of simultaneous purchase and gift. The opinion states (110 F. (2d) 371, 373):

> "The regulation was evidently designed for a case where a policy was given away some time after issuance. We do not interpret it as intended for a case where a single premium policy is given away simultaneously with issuance."

It thus appears that the *Guggenheim* case was the exception to, and the case at bar within, the general rule. It is therefore natural that the distinction should be pointed out in the former, and not in the latter. There is no reason for disturbing the decision of the court below that the Treasury Regulations were valid as applied to a typical case falling within their purview.

The situation in the present case differs widely from that in the *Guggenheim* and *Powers* cases. As the Circuit Court of Appeals in the *Guggenheim* case (110 F. (2d) 371, 373) pointed out, if a parent pays $1,000 for an automobile to be delivered to his son as a gift, the value of the gift is $1,000, just as if the parent had given his son the money to make the purchase. And the same is true of insurance policies, or any other kind of property. If the property is purchased for the purpose of making a gift, and as a part of the same transaction, the amount of the gift is the cost of the property. It was so held in the *Guggenheim* and *Powers* cases.

On the other hand, if the parent in our illustration had purchased the automobile for his own purposes, and

2. Article 2, Regulations 79, 1933 Edition, quoted in the appendix to the Government's petition, at p. 7. In the 1936 edition of the regulations, this provision was removed, and another substituted which adopted the cost of a comparable policy as the measure of value. Article 19(9), quoted at p. 10 of the petition.

several years later gave it to his son, the value of the gift would be what the car would bring on the market; and if the only available purchaser was a dealer, the value of the gift would be the price that could be obtained from that dealer. It would not be the amount which the parent would have to pay the dealer for a similar automobile, an amount which would normally include the dealer's cost of doing business and his profit on the transaction. The expenses of sale cannot fairly be considered in determining the value of a gift unless the property was purchased for the purpose of making the gift, in which case the expenses would have been incurred for the benefit of the donee. As the Circuit Court of Appeals, quoting the Board of Tax Appeals, said in this case,[3]

> " 'The fact that insurance companies assume risks and make a charge for doing so which reduces the salable value of the contract from the moment of its issue is of no importance. The true test of value is what such contracts can be sold for, not what it will cost to turn around and buy another one from the insurance company which chooses to make a service charge for issuing another.' "

The difference between the two situations is fundamental. When the purchase and gift are unconnected, the value of the property given is the amount of money which the donor could receive for it, and the court below so held.

2.

The second difference of fact between the case at bar and the *Guggenheim* and *Powers* cases lies in the stipulation and finding of fact referred to above (p. 1). In the present case it was stipulated that no greater amount could have been received upon the insurance policies in question than their cash surrender value *in any way*, from the insurance company or otherwise. This is strong evidence

3. R. 93. The opinion is now reported at 114 F. (2d) 150. The quotation appears on page 153.

of fair market value. Fair market value is generally accepted as the standard of statutory "value", and is adopted as such by the Treasury Regulations under both the Gift Tax and Estate Tax laws.[4] There is no evidence in the record of the present case upon which any other market value could be predicated. In the words of the court below (R. 93, 114 F. (2d) 150, 153),

> "The parties stipulated that 'no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values.' The District Court found the foregoing to be a fact. If 'fair market price' has any significance for the present question it would seem that the cash surrender value more nearly conforms to the fair market value test than does the cost of duplication."

There is no reason why insurance policies should be valued differently from other kinds of property. A paid-up insurance policy is in substance a right to receive a certain sum of money at the death of a person of a given age. The insured in this case was 79 years old when the policies were assigned (petition, p. 2). The Treasury Department has adopted rules for the computation of the present value of such a right for gift tax purposes. Article 19, Regulations 79, Table A, gives the present value of the right to receive $1 at the death of a person 79 years of age as $0.81159. On this basis, the present value, on the date of the gift, of the right to receive the face amount of the policies in question ($200,000, petition, p. 2) is $162,318. The decision of the court below fixes this value at $161,965.

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4. Article 19(1), Regulations 79, quoted in the Government's petition at pages 8-10. To the quotation from the 1933 edition should be added the following:

> "Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects *the fair market value* thereof as of the date of the gift, the selling price will be accepted as the amount of the gift." (Italics supplied.)

Similarly, the Estate Tax Regulations (Article 10(a), Regulations 80) provide:

> "The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death."

The smallness of the difference between the two figures ($353) demonstrates the soundness of the method of valuation adopted by the Circuit Court. The opinion below said (R. 93-4, 114 F. (2d) 150, 153):

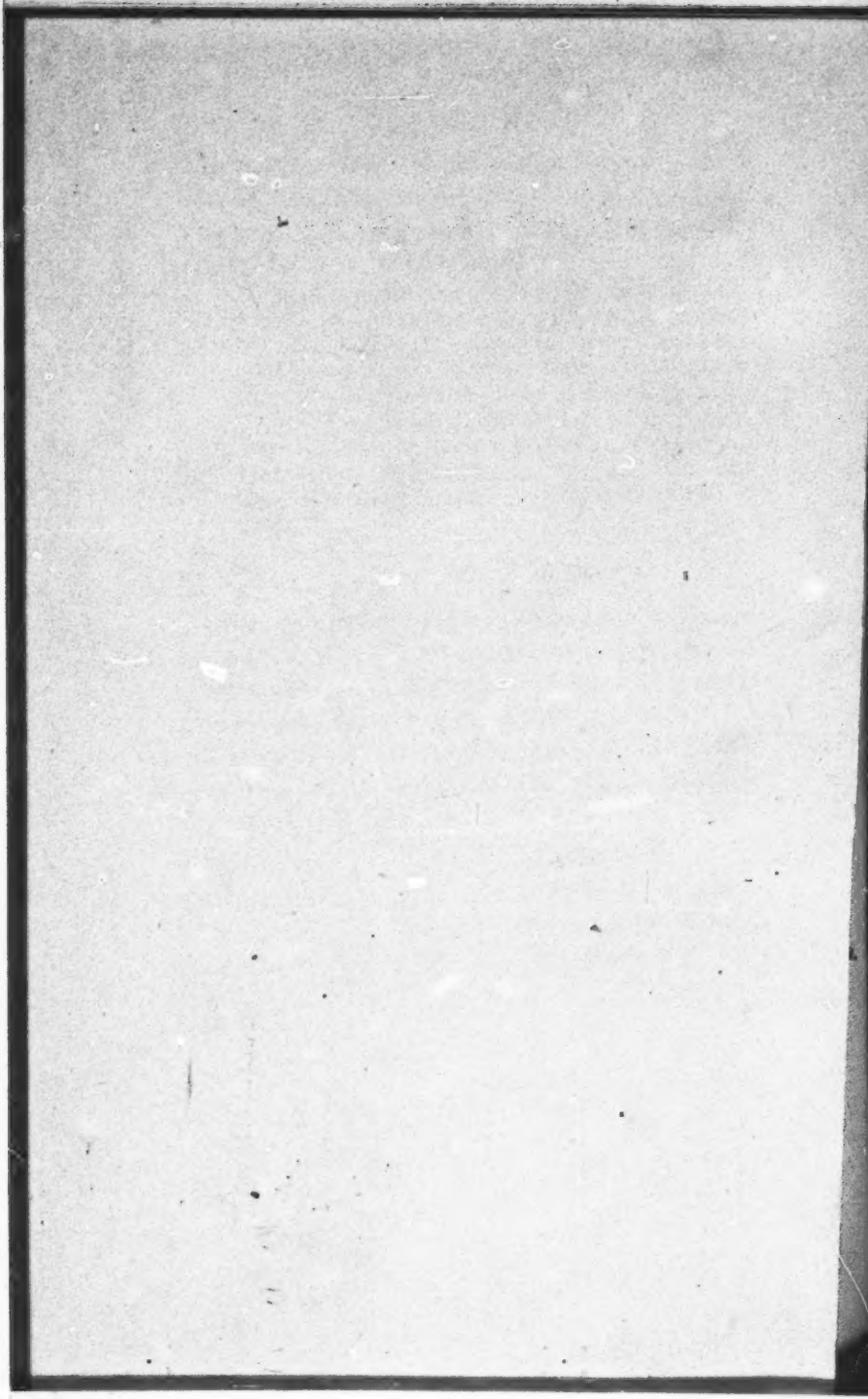
> "Making due allowances for costs of administration which are properly allocable to an insurance policy, the cash surrender value at any particular time is approximately the present worth of the face of the policy as of the 'expectancy' date of the death of the insured. * * * in computing values of contracts of insurance we cannot ignore the basic data upon which all such contracts are predicated and which enter into all determinations of values which are fixed by the contract."

Conclusion.

It is respectfully submitted that the Government's petition for a writ of certiorari in this case should be denied, because there is no adequate showing of a conflict between the decision below and the decisions of other Circuit Courts of Appeals on the valuation question, and because no other reason appears for disturbing the decision of the court below on this question.

Respectfully submitted,

Walter T. Fisher,
William N. Haddad,
Counsel for Respondents.



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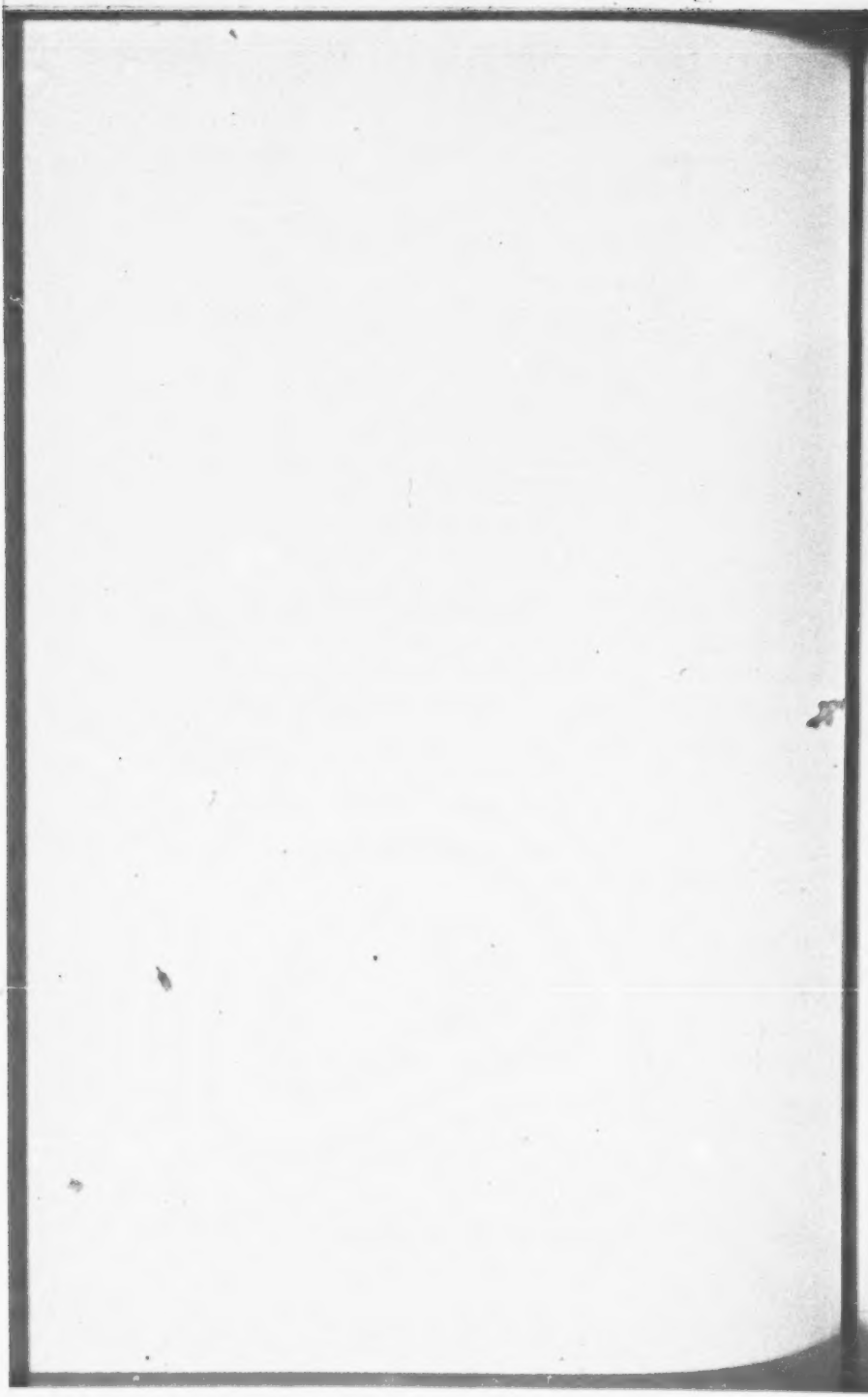
WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Respondents,
135 South La Salle Street,
Chicago, Illinois.

THE CHURCHILL-HARRIS PRINTING COMPANY, 310 WEST JACKSON, CHICAGO



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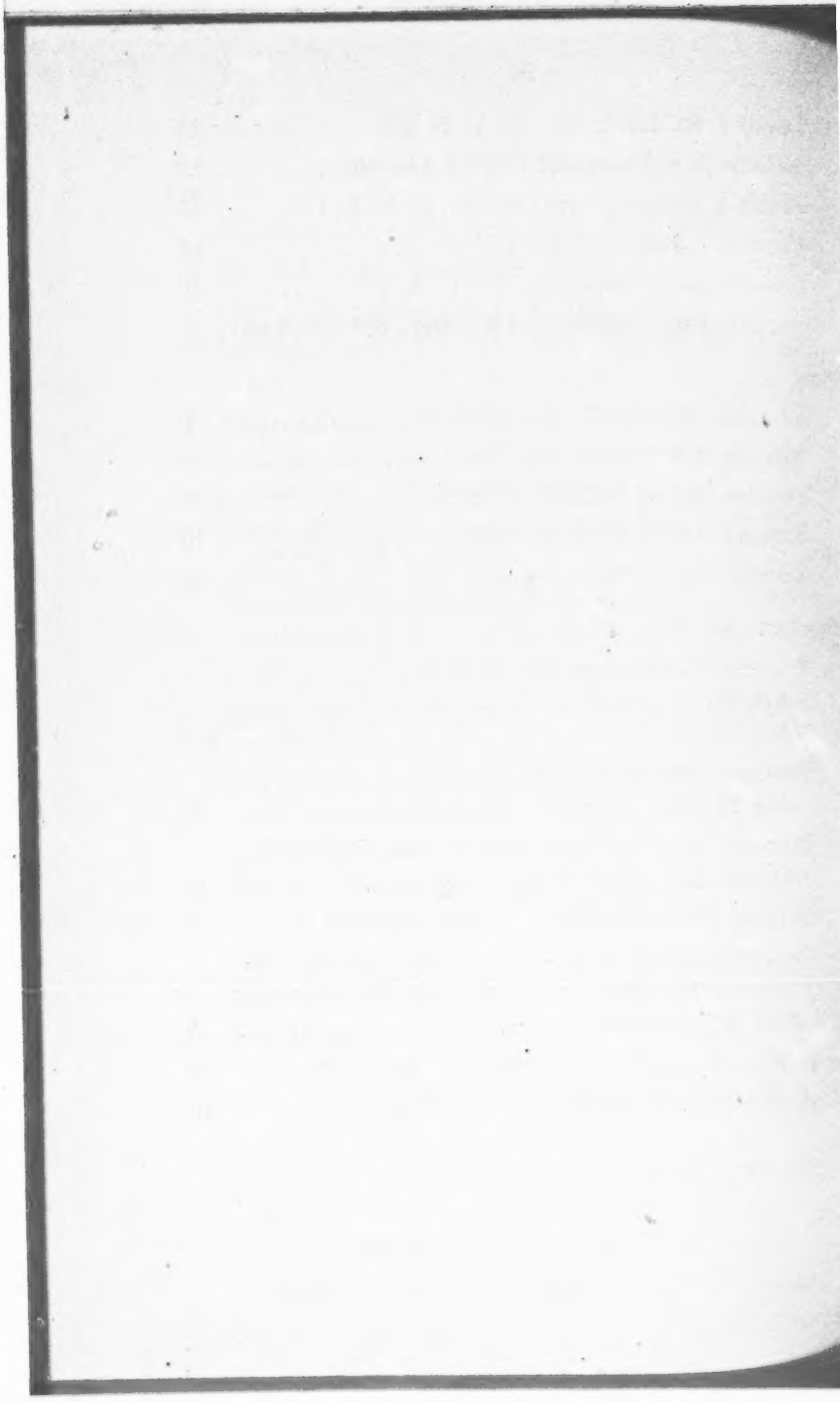

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BRIEF FOR RESPONDENTS.

ADDITIONAL STATEMENT OF FACTS.

The parties in this case stipulated (R. 38, 39), and the District Court found as a fact (R. 72), that no greater amount could have been obtained or realized on the insurance policies in question by surrendering them or borrowing on them, or otherwise, than their cash surrender values.

ARGUMENT.

There is one important difference between this case and the *Guggenheim* and *Powers* cases, Nos. 92 and 486. In those cases the policies were assigned simultaneously with issuance or shortly thereafter. In this case the policies were taken out by the taxpayer in 1928 and 1929, and they were not assigned until December, 1934. The purchase of the policies and their assignment were not simultaneous; nor were these policies obtained for the purposes of the gift. The amount "donatively expended" was not the cost of the policies (which, incidentally, was less than their surrender values on the date of the gift), but their value at the time of the transfer. The policies were originally taken out by the taxpayer for her own purposes. The proceeds were made payable to her estate, and they remained in that form for about six years. Whatever special value the policies had to the taxpayer *as insurance* (as distinguished from their value as investments) was presumably gone in 1934 when she decided to give them away.

What the taxpayer assigned in 1934 was merely the insurance company's promises to pay the face amount of the policies, $200,000, upon her death. Obligations of that kind are ordinarily valued by reference to the interest and mortality tables. The tables prescribed in Treasury Regulations 79 (Article 19, Table A) show that the present value on the date of the gift of the right to receive the face amount of the policies was $162,318.[1] This is just

1. When the policies were assigned, in December, 1934, the taxpayer was 79 years old (she was born on August 28, 1855 (R. 45)). Table A in Article 19 of Regulations 79 shows that the present worth of $1 due at the death of a person 79 years old is $0.81159. On this basis, the present value of the face amount of the policies on the date of the gift was 200,000 x $0.81159, or $162,318. Use of the tables in this way to determine the value of a remainder or reversionary interest is prescribed in both the 1933 and 1936 editions of the Regulations. Reg. 79, Art. 19 (7).

$353 more than the value determined by the lower court. The comparative figures are as follows:

Actual cost of policies (in 1928 and 1929) (R. 38, 39)	$157,973.00
Value determined by lower court, based on surrender values	161,965.00
Present worth of face amount of policies as of date of gift, based on tables prescribed in Treasury Regulations	162,318.00
Hypothetical cost of similar new policies if taken out on date of gift	171,426.00

We submit (1) that this case is governed by the Treasury Regulations of 1933 that were in force on the date of the gift, and that under these regulations, the value of the policies was determined by their cash surrender values; (2) that the change made in the regulations in 1936 should not be applied retroactively to the present gifts which were made in 1934; and (3) that on the facts of this case, the lower court was correct in holding that the value of the policies in question was their surrender values—irrespective of the 1933 Regulations, and notwithstanding the 1936 Regulations.

I.

Article 2 (5) of Regulations 79 (1933 edition) which was effective throughout the year 1934 provided as follows:

> "(5) The irrecoverable assignment of a life insurance policy, or the naming of a beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift."

Although Article 2 dealt generally with transfers reached by the gift tax law, paragraph 5, which is quoted above, goes further and defines the taxable amount of the transfer. That this paragraph was intended to prescribe a rule of valuation, and was so understood by the Bureau, is shown by General Counsel's Memorandum 13147, XIII-1

Cum. Bull. 358 (1934), which gives a number of examples of how the rule would apply to different types of policies.

It is true that the regulation does not specifically mention paid-up or single premium policies. But there is no reason to suppose that a different rule was intended for policies of that kind. A single-premium policy is no different in kind from an annual premium policy. In both contracts, a part of the premium goes into a reserve which makes up the surrender value, and a part is allocated to salesmen's commissions, overhead, and other expenses. In both policies there is a margin between what the insured pays and what he could get back on surrendering the policy. If the value of an ordinary policy on which, say, nineteen premiums have been paid, is determined by its cash surrender value (with minor adjustments on account of the current premium), then it would be illogical to hold that the value of a paid-up policy is based on anything other than its surrender value. Certain types of policies become paid-up after a specified number of premiums have been paid. The more usual forms are the so-called Ten, Twenty and Thirty Payment Life contracts. When one of these policies reaches the paid-up status, it becomes the exact equivalent of a single-premium policy. Yet it was hardly intended that a Twenty Payment Life policy, for example, should be valued on one basis in its nineteenth year and on an entirely different basis in its twentieth year, after it has become paid-up. If not, then no distinction between a single-premium policy and any other type of contract can be justified.

The Regulations, it will be noted, speak in general terms, of "the irrevocable assignment of a life insurance policy." This language is broad enough to cover any policy, whether the premium is payable in one sum or in installments, and no exception is mentioned. The last clause of Article 2 (5) provides for an adjustment of the surrender value to the

date of the gift by adding or subtracting a certain portion of the last annual premium (See G. C. M. 13147, *supra*). The government argues that the regulation was not intended to apply to single-premium policies because as to such policies, this last clause would lead to circuitous and involved computations. But the more reasonable view, we submit, is that the regulation is applicable to all policies, as it purports to be, and that it is only the last clause, about adjustments, that is inapplicable to single-premium policies where no adjustment is necessary. The adjustment, or lack of it, does not appear to be of controlling importance. The substance of the regulation is that the value of an insurance policy is based on its "net cash surrender value."[2]

Article 2 (5) of the 1933 Regulations has been construed to apply to paid-up or single premium policies by three Circuit Courts of Appeals, in addition to the court below.[3] The Board of Tax Appeals reached the same result independently of the regulations.[4] The only contrary decisions are those in *Guggenheim* v. *Rasquin*, 110 F. (2d) 371 (C. C. A. 2d), and *Commissioner* v. *Powers*, ____ F. (2d) ____ (C. C. A. 1st, July 16, 1940), both of which are now before this court,[5] and both of which involved policies that were trans-

2. This is supported by an unpublished ruling made by the Deputy Commissioner of Internal Revenue in a letter dated Nov. 10, 1932. The letter is quoted in C. C. H. 1932 *Fed. Tax Service*, Vol. 3, par. 6543, as follows:

"Reference is made to your letter of November 2, 1932, in which you request advice as to the manner of valuation of life insurance for gift tax purposes under the Revenue Act of 1932 where the insured makes an irrevocable gift of the policy to the beneficiary.

"In reply you are advised that it is contemplated that the Bureau will accept the cash surrender value in cases such as the case cited.

"Suggestions as to other means of valuation in such cases will be given consideration by the Bureau if and when they are submitted.

"The gift tax regulations will be available on or about January 1, 1933."

3. *Commissioner* v. *Haines*, 104 F. (2d) 854 (C. C. A. 3d); *Helvering* v. *Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Helvering* v. *Bryan*, 109 F. (2d) 490 (C. C. A. 4th).

4. *Cronin* v. *Commissioner*, 37 B. T. A. 914, affirmed *Helvering* v. *Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Haines* v. *Commissioner*, 37 B. T. A. 1013, affirmed *Commissioner* v. *Haines*, 104 F. (2d) 854 (C. C. A. 3d).

5. Nos. 92 and 496 respectively.

ferred simultaneously with their issuance, or shortly thereafter. The Circuit Court in the *Guggenheim* case interpreted the 1933 regulation as not intended "for a case where a single premium policy is given away simultaneously with issuance." The majority of the court in the *Powers* case felt that the regulation could not validly be applied to to the policies there involved. Neither of these cases is inconsistent with a holding that the 1933 regulations are applicable to a policy which is assigned long after its acquisition.

The distinction suggested in the *Guggenheim* and *Powers* cases between policies that are assigned contemporaneously with their issuance, and other policies, is supported by a comparison of paragraphs (5) and (6) of Article 2 of the 1933 Regulations. Under paragraph (5), the assignment of a life insurance policy constitutes a gift in the amount of the net cash-surrender value, with certain adjustments; but under paragraph (6) the payment of a premium on a policy owned by another is a gift to the full extent of the premium paid. The application of these two paragraphs might be illustrated thus: A donor has an ordinary life policy on which he has paid ten annual premiums of $100 each, and having a surrender value of, say, $600. He makes an irrevocable assignment of the policy. In the following year, he pays another premium of $100, which increases the surrender value to $660. Under Article 2 (5) of the Regulations, the assignment of the policy is a gift to the extent of only $600, even though the premiums previously paid amounted to $1000; but under Article 2 (6), the payment of the subsequent premium is a gift to the extent of the entire $100. The reason for the first result is that of the $1000 paid in previous years $400 had already been used up for insurance protection, expenses, etc., leaving an "investment" of only $600 on the date of the gift. While in the second case, though it is true that a

portion of the premium payment will likewise be used for current charges, and will not be reflected in the increased value of the policies, yet these charges will then be incurred and paid for the benefit of the assignee, and the entire payment will be made for his account. The total benefit received by the donee in that case will be $100, whether the amount is added to his capital assets or is partly used to pay expenses on his behalf. The assignment of an insurance policy simultaneously with its issuance might be considered as similar to the payment of the later premium. The entire expenditure in such a case could be regarded as having been made for the benefit of the donee; and in that light, the value of the asset purchased—whether or not the purchaser received his money's worth—would be immaterial.

The above distinction is also borne out by the provisions in the Regulations about the valuation of annuities. Article 19 (7) of Regulations 79 (1933 edition) provided as follows:

> "(7) *Annuities, life, remainder, and reversionary interests.*—Where the donor purchases from a life insurance company or other company issuing annuity contracts, an annuity for the donee, the value of the gift is the cost to the donor, except that where the donor reserves the unconditional right to cause the annuity or the cash value thereof to be payable to himself or his creditors, only such payments as are made to the donee prior to the exercise of the reserved right constitutes gifts. The value of annuities otherwise acquired by the donor and by him assigned or in any manner made payable to the donee annually at the end of each year should be determined by using Table A or Table B, part of this article. * * *"

Thus, if a donor purchases from an insurance company "an annuity for the donee" the value of the gift is the cost to the donor, whether that cost is more or less than the annuity is worth. But if the annuity is "otherwise acquired" (which would normally exclude an acquisition

"for the donee") the value is the present worth of the annuity as determined by the standard tables. It is hardly necessary to add that the cost of an annuity purchased from an insurance company is normally greater than the present worth of the expected payments, because of the company's cost of doing business.

A life annuity is the converse of a single-premium life insurance policy. The two contracts correspond to a life estate and a remainder respectively. An insurance company selling a life interest must charge something more than the commuted value of the expected payments; a company selling a remainder must similarly charge something more than the discounted value of the remainder. We believe that the 1933 regulations are susceptible of a construction which will apply a consistent rule to the valuation of both of these interests. Under this rule, when an insurance policy is assigned long after it is acquired, in an entirely unrelated transaction, the amount of the gift is not what that or a similar policy would cost, but what the policy is worth at the time of the assignment. And we submit that the cash surrender value is a fair measure of that worth.

II.

Article 2 (5) of the regulations remained in its original form throughout the years 1934 and 1935. It was not until the 1936 edition that the regulations were amended so as to provide that the value of a paid-up insurance policy is the amount that it would cost to obtain a new policy on the date of the gift. In the meantime, Congress had twice amended the gift tax law[6] without making any changes on this subject. We submit that under these circumstances, the 1936 regulations should not be applied retroactively. *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110. *First Chrold Corporation* v. *Commissioner*, 306 U. S. 117.

6. Rev. Act of 1934, Sec. 520; Rev. Act of 1935, Sec. 301.

The government seeks to distinguish the *Reynolds* case on the ground that the regulation there involved announced the *nontaxability* of a certain transaction, whereas the regulation here simply deals with the measure of tax on a concededly taxable transaction. But we do not see any difference of substance between announcing that a transaction is nontaxable and announcing that it is taxable only to a certain amount.

The government also suggests that the *Reynolds* case be overruled. We submit that the case should not be overruled. The policy served by empowering the Commissioner to make regulations requires that he be authorized to make regulations *which can be relied upon.* The regulations would have little value if their most explicit provisions can be changed retroactively for no reason other than the Commissioner's desire to discard a tenable theory and adopt a competing one.[7]

It is true that section 1108 (a) of the 1926 Act, as amended in 1934, authorizes the Commissioner to prescribe the extent to which any ruling or regulation shall be applied without retroactive effect. But the purpose of this section was to ameliorate the effect of retroactive changes rather than to encourage such changes, or to give express sanction to them. There is nothing in the legislative history to the contrary. It should be remembered that prior to the enactment of section 1314 of the Revenue Act of 1921, Treasury regulations and Decisions were, if valid, automatically applicable to past as well as future transactions, the same as court decisions. It was to mitigate the harsh effects often produced by such retroactive decisions that Congress made the successive amendments in the statute,

7. The Conference Report on Section 605 of the Revenue Act of 1928 quoted on page 28 of the government's brief in the *Guggenheim* case (No. 92), contains the following:

"It is hoped that this provision will prevent the constant reopening of cases on account of changes in regulations or Treasury decisions, and it is believed that sound administration properly places upon the Government the responsibility and burden of interpreting the law and of prescribing regulations upon which the taxpayers may rely. * * *"

each time increasing the power of the Commissioner to withhold retroactive application from changes in the established practice or interpretation. The power of the Commissioner to amend his regulations, therefore, does not rest on any specific enactment by Congress. In so far as Congress has spoken on the subject, it has expressly authorized the Commissioner to make his new rulings *without* retroactive effect, and it has clearly indicated its intention that changes in the rulings should not be applied retroactively when such application will work inequitable results.[8]

The inequitableness of retroactive changes in the regulations is particularly great in the case of the gift tax which, unlike the estate or income tax, is purely an excise on voluntary transfers. This Court has held that Congress itself has no power to levy a gift tax on past transfers,[9] and in successive amendments of the statute, Congress has expressly provided that the changes made should apply only to future gifts.[10] There is all the more reason for holding that changes in the regulations which have the effect of increasing the tax should apply only to future gifts.

III.

The federal gift tax is closely related to the estate tax, which it was intended to supplement. The two taxes form a system under which the maximum rates (of estate tax) are now over 70%, and it would not be hard to imagine a case where the property with respect to which the assessment is made has to be sold in order to pay the tax.

8. See the excerpt from House Ways and Means Committee Report (H. Rep. 704, 73rd Cong. 2nd Sess.) quoted on pages 30 and 31 of the government's brief in *Guggenheim* v. *Rasquin*, No. 92.

9. *Blodgett* v. *Holden*, 275 U. S. 142; *Untermeyer* v. *Anderson*, 276 U. S. 440.

10. Rev. Act of 1934, Sec. 520(b); Rev. Act of 1935, Sec. 301(c); Rev. Act of 1938, Sec. 505(b); Rev. Act of 1940, Sec. 207.

In such a system, the "value" on which the tax is based ought to bear the closest possible relation to what the property would actually bring if it had to be converted into cash within a reasonable time.

Whatever may be the correct rule with respect to property bought for the purposes of the *gift*, in the case of property previously acquired by the donor for his own purposes and later given away, the amount of the gift is what the property would bring on the market. In the present case, the parties stipulated, and the District Court found, that the surrender values of the policies were $161,965, and that "no greater amount could have been obtained or realized upon the policies by surrendering them or borrowing on them, or otherwise, than these surrender values". (R. 38, 72.) Bearing in mind that the policies were taken out several years prior to the gift, we submit that the value so determined was the proper value of the policies for gift tax purposes.

Value has often been defined as what a willing buyer would pay to a willing seller. In the case of insurance, it usually takes persuasion of a high order to make the buyer willing, for which persuasion the agent receives a substantial commission that is included in the cost of the policy. An insurance policy is a species of property that peculiarly depreciates as soon as it is issued. It is like a suit of clothes that is made to measure, or a machine that is built to individual specifications. The machine might have a subjective value to the purchaser (or the person for whom it is purchased) equal to its cost; but its objective or commercial value is usually less than that amount. If the purchaser of the suit of clothes dies, his inheritance tax would be based, not on what it would cost to replace the suit, but on what the suit could be sold for; and the value in the case of a gift should be no different.

A similar situation, in principle, is presented in the so-called "blockage" valuation cases under the estate tax law. If a decedent dies owning a large block of stock which cannot be sold without depressing the market, it is recognized that the value of the block is less than the amount indicated by the market quotations.[11] This is true even though it is obvious that in order to replace a block of that size, it would be necessary to pay a price at least equal to the market quotations.

The government's brief in the *Guggenheim* case (p. 11) states that in the case of the purchase of an automobile, the purchase price would probably be its value for the purpose of the gift tax statute. We submit that that would depend on whether the automobile was purchased for the donee. If the automobile was purchased by the donor for his own use, and was later given away, the amount of the gift would be the sale value of the automobile at that time, irrespective of its cost; and if the only buyer for the car happened to be the dealer himself, then the price which the dealer was willing to pay would be the measure of that value. Certainly if the owner were to die, it would not be contended that his estate is taxable on the replacement cost of the automobile.

The cases cited on page 13 of the government's brief in the *Guggenheim* case, concerning values recognized in conversion suits, actions for breach of contract, and the like, are not applicable here. Value there is used as a measure of damages, and since the object is to make the plaintiff

11. See *Helvering* v. *Safe Deposit* Co., 95 F. (2d) 806 (C. C. A. 4th); *Wood* v. *United States*, 29 F. Supp. 853 (Ct. Cls.); *Jenkins* v. *Smith*, 21 F. Supp. 251 (D. C., Conn.); *Knoblock* v. *Smith*, 25 F. Supp. 156 (D. C. Conn.). The Treasury Regulations at one time contained a provision to the contrary, as follows (Reg. 80, Art. 19(c)):

"The size of holdings of any security to be included in the gross estate is not a relevant factor and will not be considered in such determination."

This provision was deleted in an amendment made in 1939. T. D. 4902, 1939-1 Cum. Bull. (Part 1) 325.

whole, replacement cost is the best measure of that value.[12] For tax purposes, however, the only reasonable measure of value is what the property would bring in cash under normal conditions, and if there is only one possible purchaser or one possible way of realizing on the property, the amount that can be realized in that way represents the value of the property. If any exception is to be made where the property is bought for the donee, on the ground that the entire cost is expended for the donee's benefit, such exception would not be applicable in the present case.

What the taxpayer in the present case assigned to the donees was merely the right to receive $200,000 upon her death. She could have accomplished the same result by giving them a note for $200,000 payable upon her death (without interest) or by making them remaindermen of a $200,000 trust subject to a life estate in herself. In the latter cases, the value of the note or of the remainder interest for either gift or estate tax purposes would be $162,318. This differs by only a trifling amount from the value placed upon the policies by the Circuit Court, and demonstrates the correctness of the Court's decision in that respect.

We respectfully submit that the decision of the Circuit

---

12. Even in suits of that nature, the surrender or legal reserve value of the policy, or the commuted value of the expected proceeds, is often used as a measure of damages. See *Lovell* v. *St. Louis Co.*, 111 U. S. 264; *People* v. *Security Life Ins. Co.*, 78 N. Y. 114, 125; *Commonwealth* v. *American Life Insurance Co.*, 162 Pa. 586; *Phoenix* v. *Baker*, 85 Ill. 410; *McDonnell* v. *Ins. Co.*, 85 Ala. 408. In *Carr* v. *Hamilton*, 129 U. S. 252, 256, this Court said:

> "Every person's interest in life insurance is capable of instant and present valuation, almost as certain and determinate as the discount of a note or bill payable in the future. Tables of mortality and of all values dependent thereon are adopted by every company, and furnish an assured basis of computation for this purpose."

The Board of Tax Appeals has held that if an insurance policy is donated to charity, the amount deductible under the income tax law, is the surrender value, plus premiums paid subsequent to the gift. *Behrend* v. *Commissioner*, 3 B. T. A. 1037.

Court of Appeals on the valuation question is correct and should be affirmed.

Respectfully submitted,

WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Petitioners.

December, 1940.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 495

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

WALTER T. FISHER,
WM. N. HADDAD,
Counsel for Petitioners.
135 South La Salle Street,
Chicago, Illinois.

THE BLAKELY-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully pray that a writ of certiorari issue to review the judgment entered against the petitioners by the United States Circuit Court of Appeals for the Seventh Circuit in the above-entitled cause on July 9, 1940.

Opinions Below.

The opinion of the Circuit Court of Appeals was filed July 9, 1940, *Ryerson* v. *United States*, ... F. (2d) ..... The opinions of the District Court, filed March 31, 1939 and, on rehearing, June 29, 1939, are reported in *Ryerson* v. *United States*, 28 F. Supp. 265.

Jurisdictional Statement.

This petition is presented in accordance with Section 240 (a) of the Judicial Code (43 Stat. 938, U. S. C. Tit. 28, sec. 347). The judgment of the Circuit Court of Appeals sought to be reviewed was entered on July 9, 1940.

The Question Presented.

The sole question presented in this case is whether, under Section 504(b) of the Gift Tax Act of 1932, the donor of gifts in trust is entitled to one exclusion of $5,000 for each trust to which property is transferred, or to one exclusion for each beneficiary of the trusts.

The Statute Involved.

Section 504 of the Gift Tax Act of 1932 (47 Stat. 247, U. S. C. Tit. 26, sec. 1003), in force in 1934, provided as follows:

> "(a) GENERAL DEFINITION.—The term 'net gifts' means the total amount of gifts made during the calendar year, less the deductions provided in section 505.
>
> "(b) GIFTS LESS THAN $5,000.—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year."

Statement.

This case involves the construction of the Gift Tax Act of 1932, and concerns gifts made during the year 1934 by Mary M. Ryerson, of whose estate the petitioners are executors. During the year 1934, the taxpayer, Mary M. Ryerson, made, among other gifts, transfers to two trusts,

one for the benefit of two, and the other for the benefit of three persons. Section 504(b) of the Gift Tax Act of 1932 (47 Stat. 247, U. S. C. Tit. 26, sec. 1003), which was in force in 1934, excluded from taxation the first $5,000 of gifts "made to any person by the donor during the calendar year." The Commissioner of Internal Revenue took the position that when gifts are made by a transfer of property to trustees for the benefit of two or more persons, the number of $5,000 "exclusions" to be permitted under this statutory provision is determined by the number of trusts created, rather than by the number of beneficiaries. He assessed, and the taxpayer paid, a gift tax on that basis.

The taxpayer duly filed claims for refund upon the ground that the number of exclusions should be determined by the number of persons receiving beneficial interests. The claims were rejected, and the taxpayer thereafter brought suit against the United States in the District Court under the Tucker Act (24 Stat. 505, U. S. C. Tit. 28, sec. 41(20)). The District Court determined this question in favor of the plaintiff and permitted an exclusion of $5,000 for each beneficiary of the above mentioned trusts, deciding another question (a valuation question not involved in this petition) in favor of the United States. Both parties appealed to the Circuit Court of Appeals, where the appeals were consolidated. Pending the appeals, the taxpayer died, and the petitioners, as executors of her estate, were substituted as parties in her stead. The Circuit Court of Appeals reversed the District Court upon both issues, and upon the one here in question it held, by a divided court, that only one $5,000 exclusion should be allowed for each of the two trusts created.

The tax due on account of the gifts made by the taxpayer during the year 1935 is also involved. There is no con-

troversy regarding the amount of the gifts made in that year, but since the rate at which gifts are taxed for any year depends upon the total amount of gifts made in previous years, the controversy concerning the gifts made during 1934 affects the tax due for the year 1935.

Specification of Error to Be Urged.

The Circuit Court of Appeals for the Seventh Circuit erred in holding that under Section 504(b) of the Revenue Act of 1932 the plaintiff was entitled only to one $5,000 exclusion for each trust in question rather than to one exclusion for each beneficiary.

Reasons for Allowance of the Writ.

A.

The decision of the Circuit Court of Appeals in this case is directly in conflict with the decisions of five other Circuit Courts of Appeals and of the Court of Claims on the same question. The government has filed petitions for writs of certiorari in two of these cases.

Welch v. *Davidson,* (C. C. A. 1st, 1939) 102 F. (2d) 100.

McBrier v. *Commissioner,* (C. C. A. 3d, 1939) 108 F. (2d) 967.

Early v. *Reid,* (C. C. A. 4th, August 7, 1940) ..... F. (2d) ....., 1940 C. C. H. Fed. Tax Serv. par. 9634.

Hutchings v. *Commissioner,* (C. C. A. 5th, 1940) 111 F. (2d) 229, petition for a writ of certiorari filed September 11, 1940, *Helvering* v. *Hutchings,* No. 419.

Rheinstrom v. *Commissioner,* (C. C. A. 8th, 1939) 105 F. (2d) 642.

Robertson v. *Nee,* (C. C. A. 8th, 1939) 105 F. (2d) 651.

Pelzer v. *United States,* (Ct. Cl. 1940) 31 F. Supp. 770, petition for a writ of certiorari filed September 3, 1940, *United States* v. *Pelzer,* No. 393.

The court below, in reversing the judgment of the District Court, did not refer to any of these cases, all but one of which had been handed down prior to the decision herein. In the latest opinion on the subject by a Circuit Court of Appeals, it was said:

> "On July 9, 1940, after the argument in the pending case, the Circuit Court of Appeals for the Seventh Circuit by a divided court in *United States* v. *Ryerson,* ..... F. (2d) ....., reached the opposite conclusion in a similar case. Without reference to the strong current of contrary authority, the court based its conclusion upon its earlier decision in *Commissioner* v. *Wells,* to which we have referred. We find ourselves in accord with the reasoning of the other circuits, and the judgment of the District Court is therefore affirmed."
>
> *Early* v. *Reid,* (C. C. A. 4th, August 7, 1940) ..... F. (2d) ....., 1940 C. C. H. Fed. Tax Serv. par. 9634.

B.

The question involved is an important one, concerning the construction of a federal statute, which has not been, and should be, settled by this court. Although the statute has been amended so that the $5,000 exclusion is eliminated in the case of all gifts in trust made after December 31, 1938,[1] many cases are pending concerning gifts made prior to that date. The government's petition for a writ of certiorari in *United States* v. *Pelzer,* filed September 3, 1940, No. 393 (p. 9) states that there are approximately 35 cases involving this problem now pending in the federal courts, and a considerably larger number before the Board of Tax Appeals and in the Bureau of Internal Revenue. Moreover, the question will continue to arise in connection with

(1) Revenue Act of 1938, section 505, 52 Stat. 565.

gifts made subsequent to 1938, because the rate of tax in each year is still dependent on the total amount of gifts made in prior years.

The decision in this case, if allowed to stand, will constitute an unfortunate precedent. This court, in keeping with its disposition of tax questions upon the basis of economic benefit rather than of refinements in title, has recently held that when a transfer is made in trust, with the right reserved to change the beneficiaries, no gift tax is payable, and, conversely, that a tax is incurred when the right to change the beneficiaries is surrendered.

Estate of Sanford v. *Commissioner,* (1939) 308 U. S. 39.

Rasquin v. *Humphreys,* (1939) 308 U. S. 54.

In the *Sanford* case the court said (pp. 42-3):

> "When the gift tax was enacted Congress was aware that the essence of a transfer is the passage of control over the economic benefits of property rather than any technical changes in its title. * * * 'Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed.'"

By the decision of the Circuit Court of Appeals in the case at bar, a taxpayer who transfers property to one trust for several beneficiaries is permitted only one exemption from tax, while a taxpayer who creates a number of trusts, all for the same beneficiary, receives several exemptions, and may even avoid the tax entirely. The dissenting opinion in the Circuit Court of Appeals said of the petitioners' contention:

> "It seems to me that any other construction does violence to the congressional intent and promotes evasion of taxes. If the trust and not the beneficiary is the donee, then a donor may, by creating ten separate trusts, that is, creating ten trusts in ten separate persons as trustees and by designating the same beneficiary in each trust, give $50,000 to one donee without payment of any gift tax. This result, I think, is not

within the express purport or implication of the legislation. Rather the Congress meant to prevent tax-free donations in excess of $5,000 in any recipient."

By the decision in the court below, the right to an exemption and the duty to pay the tax are both made to depend not upon the transfer of economic benefit, but upon the technical question of whether one trust is created for the benefit of several persons, or several trusts for the benefit of one person.

Conclusion.

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson,
By WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Petitioners.

October, 1940.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 495

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BRIEF FOR PETITIONERS.

WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Petitioners,
135 South La Salle Street,
Chicago, Illinois.

THE BLAKELY-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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BRIEF FOR PETITIONERS.

Opinions Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 90-97) is reported in *Ryerson* v. *United States*, 114 F. (2d) 150. The opinions of the District Court (R. 61-71) are reported in *Ryerson* v. *United States*, 28 F. Supp. 265.

Jurisdictional Statement.

A petition for a writ of certiorari was filed on October , 1940, pursuant to Section 240(a) of the Judicial Code 43 Stat. 938, U. S. C. Tit. 28, sec. 347), and the writ was ranted on November 12, 1940.

Statement of Facts.

The Gift Tax Act of 1932 excluded from taxation the first $5,000 of gifts "made to any person by the donor during the calendar year".[1] In 1934 Mary M. Ryerson, the taxpayer in this case, transferred property to two trusts, one for the benefit of two persons, and the other for the benefit of three persons. The petitioners contend that $5,000 should be excluded from the taxable gifts on account of each of the beneficiaries of the trusts, making a total exemption of $25,000. The government's position, which has been upheld by the Circuit Court of Appeals, is that the number of $5,000 "exclusions" is determined by the number of trusts, and that the exemption is thus limited to $10,000.

The property transferred by the taxpayer consisted of two insurance policies on her own life, each in the face amount of $50,000 and with a cash surrender value of $40,286 (R. 72). One of these policies was assigned to Donald McKay Frost and Mary Ryerson Frost as trustees under a trust agreement dated October 31, 1933 (R. 71). The Commissioner of Internal Revenue allowed only one $5,000 exclusion on account of the assignment to this trust. The District Court determined that there were two beneficiaries of this trust, each receiving a present interest in the trust estate worth more than $5,000 (R. 65), and it accordingly allowed two exclusions (R. 74).

The other insurance policy was assigned to Joseph T. Ryerson and Edward L. Ryerson as trustees under a trust agreement dated November 15, 1934 (R. 72). The District Court found that there were three beneficiaries of this trust, each with a present interest in the trust estate worth more than $5,000 (R. 66, 72). The Commissioner originally refused to allow any exclusions on account of this assignment (R. 74), but the Government

1. Sec. 504(b)—quoted on p. 4.

conceded in its brief before the District Court that one exclusion should be allowed. The District Court held that three exclusions should be allowed (R. 74).

On appeal, the Circuit Court of Appeals reversed the District Court, and held that only one exclusion was allowable for each of the trusts in question (R. 96).

The Commissioner assessed, and the taxpayer paid, a tax upon the basis asserted by the Commissioner. The taxpayer duly filed claims for refund, which were rejected (R. 72-74), and thereafter brought suit in the District Court. The District Court decided this question in favor of the taxpayer. Another question—regarding the value of the insurance policies above mentioned and two other policies—was decided in favor of the government. Both parties appealed. Pending the appeals, the taxpayer died, and the present petitioners, as executors of her estate, were substituted as parties (R. 87). The Circuit Court of Appeals reversed the District Court on both issues, and both parties filed petitions for writs of certiorari, which were granted. The valuation question is presented in *United States* v. *Ryerson*, No. 494.

The tax due on account of the gifts made by the taxpayer during the year 1935 is also involved in the suit. There is no controversy regarding the amount of the gifts made in that year, but since the rate at which gifts are taxed for any year depends upon the total amount of gifts made in previous years, the controversy concerning the gifts made during 1934 affects the tax due for the year 1935.

Specification of Error to Be Urged.

The Circuit Court of Appeals erred in holding that under Section 504(b) of the Gift Tax Act of 1932 the plaintiff was entitled to only one $5,000 exclusion for each trust to which she transferred property, rather than one exclusion for each beneficiary of the trusts.

transfer to a trust under which the donor retains the power to change the beneficiaries. *Rasquin* v. *Humphreys*, 308 U. S. 54. On the other hand, the relinquishment of the power to revoke or to change the beneficiaries—thus fixing the beneficial interests—does constitute a taxable gift. *Estate of Sanford* v. *Commissioner*, 308 U. S. 39. It is thus shown that the statute is concerned with the transfer of the equitable ownership, or the economic benefits, of the property, rather than its legal title. In the simple case of a transfer, by way of gift, to A as trustee for B, the transfer is taxable either because the conveyance to A operates to transfer the equitable title to B, or because the transfer results in an "indirect" gift to B within the meaning of the statute. In either case the "person" to whom the taxable gift is made is the beneficiary, and under any fair construction of the statute, the allowable exemption should be measured by the gift to that person. It is true that there is also a transfer of the legal title to A, the trustee. But the legal title, by itself, is of no value, and its transfer would not give rise to a tax. A transfer, for example, to trustees for the benefit of the donor himself would obviously not be taxable. (See *Burnet* v. *Guggenheim, supra*, p. 287.) In the *Rasquin* case the legal title was transferred to the trustees, and irrevocably so; but there was no tax, because the donor retained control over the beneficial interests.

In the *Sanford* case the trust was created in 1913 and was made irrevocable in 1919, but the power to change the beneficiaries was not relinquished until 1924. If the trust was the "person" to whom the gift was made within the meaning of section 504 (b), then the $5,000 exemption would be applicable against the gift made in 1913, or, at the latest, 1919, because there was no further transfer to the *trust* after that date. But since the 1913 and 1919 transactions were not taxable, an exemption in either of those years would be meaningless. And on the same reasoning,

no exemption would be allowed in 1924, in the only year in which a taxable transfer occurred.[2]

A donor can make a gift by executing a declaration of trust naming himself as trustee.[3] In such a case there would be no conveyance of the legal title. The only transfer that would occur would be a transfer of the equitable title to the beneficiaries; and in that case it would be difficult to deny that the beneficiaries are the "persons" to whom the gift was made. Yet, surely, the exemption is not to be any different under a declaration of trust from what it is under a deed of trust. Or, to vary the example slightly, a donor might set up a trust naming himself as the beneficiary, and later assign his beneficial interest to his children. Here again, it is obvious that the only donees are the children, and that the $5,000 exclusions must be deducted from the values of the equitable interests assigned to them. Yet the case would be no different, in substance, if the children had been named as the original beneficiaries.

The position taken by the government rests largely on the definition of the word "person" which is contained in section 1111 (a).[4] It should be noted that the definitions in this section have no special reference to the Gift Tax Title. The terms defined are those used generally throughout the Revenue Act, and the definitions were carried over from previous revenue acts that contained no gift tax provisions at all.[5] It should not be assumed that the general definitions were intended to deprive the words used of their ordinary meanings when to do so would produce illogical or arbitrary results. But taken in the most favorable light,

2. The 1924 Act under which the *Sanford* case arose contained no provision similar to section 504(b) of the 1932 Act. But the same situation could easily arise under the later Act.

3. The Commissioner's Regulations expressly so provide. Reg. 79, Art. 2.

4. Quoted on p. 5.

5. Section 1111(a)(1) of the Revenue Act of 1932 is the same as section 701(a)(1) of the Revenue Act of 1928, and section 2(a)(1) of the Revenue Acts of 1924 and 1926.

the definition in question does not support the government's argument. It is true that a trust is a "person" under section 1111 (a), but so also is an individual; and since it is the transfer to the beneficiary that gives rise to the tax, the beneficiary, and not the trust, is the person that should be considered as the donee. This is certainly so if the same principles are applied in construing the exemption provisions of the Act as are applied to its taxing provisions. In this respect, a gift to a trust is no different from a gift which a donor might make by depositing money in a bank to the credit of his children. In such a case, the bank that receives the money, being a corporation, is a "person" within the meaning of section 1111 (a), just as much as a trust would be a "person". But it does not follow that in the application of section 504 (b) the bank should be considered as *the* person to whom the gift is made, and that the gifts to the real donees who, of course, are also "persons", should be disregarded.

The parenthetical clause in section 504 (b) gives support to our contention. That clause limits the $5,000 exemptions to gifts "other than of future interests in property". Congress must have been aware that most future interests these days are created by means of trusts, and that legal future interests are comparatively rare. It is fair to assume that in denying the exemption with respect to gifts of future interests, Congress had in mind that the donees of transfers in trust were the beneficiaries, and that the $5,000 exclusions would be applicable to their interests. Otherwise the limitation placed on the exemption provision would have little practical significance.

The denial of the exemption in the case of future interests is explained in the Congressional Committee Reports on the Revenue Act of 1932 as follows:

> "The term 'future interests in property' refers to any interest or estate, whether vested or contingent,

limited to commence in possession or enjoyment at a future date. The exemption being available only in so far as the donees are ascertainable, the denial of the exemption in the case of gifts of future interests is dictated by the apprehended difficulty, in many instances, of determining the number of eventual donees and the values of their respective gifts."[6]

It is evident from this that the exemption was intended to apply to the interests of the beneficiaries; otherwise the "apprehended difficulty * * * of determining the number of eventual donees and the values of their respective gifts" would not arise. The Committee Reports go further and give specific examples of gifts that would be taxable under the proposed act, including the following:

"(7) where A creates a revocable trust naming B as beneficiary, *a gift to B* of the corpus is effected when A relinquishes the power to revoke or the power is otherwise terminated in B's favor." (Italics supplied.)[7]

In another example, it is stated that a transfer by A to a corporation owned by his children would constitute a gift to the children.[8]

The above view is also borne out by the Commissioner's regulations under the 1932 Act. Article 11 of Regulations 79 (original edition) gives the following illustration of how the $5,000 exclusions are computed:

"A resident donor gives $10,000 in cash to each of his two sons and conveys, without a valuable consideration, property of the value of $100,000 to a trustee who is to pay the income to the donor's wife during her lifetime and at her death deliver the property to his two daughters. There should be subtracted $5,000 from each of the $10,000 gifts to the sons, *and $5,000 from the value of the life estate given to the wife*, assuming that the value of her estate equals or exceeds

6. H. Rep. No. 708, p. 29; S. Rep. No. 665, p. 41, 72d Cong. 1st Sess.; Int. Rev. Bull., 1939-1 C. B. (Part 2), pp. 457, 478, 496, 526.

7. Int. Rev. Bull., 1939-1 C. B. (Part 2), pp. 477, 525.

8. Ibid.

> that amount. *The interests of the daughters in the trust property being future interests, no such subtraction is to be made therefrom* * * *." (Italics supplied.)

It will be noted that in the above example, $5,000 is deducted from the value of the life estate given to the wife, while the remainder interests of the daughters, "being future interests", are taxed in full. The inference is clear that if the daughters had received present interests, two additional deductions of $5,000 would have been allowable, making a total of one exemption for each beneficiary of the trust.

The view that the exemptions allowable are determined by the number of trusts originated with the case of *Wells* v. *Commissioner*, 34 B. T. A. 315, 88 F. (2d) 339 (C. C. A. 7th). That case involved three separate trusts, each for the benefit of a different person. The Commissioner contended that no exemptions were allowable, on the ground that under the terms of the trust agreements the interests of the beneficiaries were "future interests". The Board of Tax Appeals overruled the Commissioner, holding that the beneficiaries took present interests, and that, at any rate, since the entire title was conveyed to the trusts, and the trusts were "persons", a $5,000 exclusion should be allowed on account of each trust. The Board's decision was affirmed by the Circuit Court of Appeals for the Seventh Circuit, that court expressing the opinion that the trusts could be considered as donees for the purposes of the exemption.

In the *Wells* case there were three trusts and three beneficiaries; so it did not make any difference in the result whether the exemptions were related to the trusts or to the beneficiaries. But in consequence of the *Wells* case, the Board of Tax Appeals, for a time, followed the rule of allowing as many $5,000 exemptions as there were trusts, regardless of whether there were several benefi-

ciaries of one trust or several trusts for one beneficiary.[9] This construction of the statute made it possible for a donor to increase the $5,000 exemption to any desired amount by the simple expedient of creating a number of trusts for the same donee. When these decisions came to the attention of Congress in 1938, Congress expressed its disapproval by amending the statute so as to withhold the exemption from gifts in trust as well as those of future interests.[10] The reason for the amendment is set forth in the Senate Finance Committee Report on the Revenue Act of 1938 as follows:

> "* * * The statute, as thus construed, affords ready means of tax avoidance, since a donor may create any number of trusts in the same year in favor of the same beneficiary with a $5,000 exclusion applying to each trust, whereas the gifts, if made otherwise than in trust, would in no case be subject to more than a single exclusion of $5,000."[11]

As observed by the Circuit Court in *McBrier* v. *Commissioner*, 108 F. (2d) 967, 969 (C. C. A. 3d), the 1938 amendment goes farther than was necessary to close the loophole created by the Board decisions. But the fact remains that if it had not been for those decisions, there would have been no occasion for making an arbitrary distinction between gifts in trust and those not in trust.

---

9. See *Knox* v. *Commissioner*, 36 B. T. A. 630; *Rheinstrom* v. *Commissioner*, 37 B. T. A. 308; *Cox* v. *Commissioner*, 38 B. T. A. 865; *Hutchings* v. *Commissioner*, 40 B. T. A. 27.

10. Sec. 505, Rev. Act of 1938 (52 Stat. 565).

11. S. Rep. No. 1567, 75th Cong., 3d Sess., p. 41; Int. Rev. Bull. 1939-1 C. B. (Part 2), pp. 779, 809. The omitted portion of the paragraph quoted refers to decisions of the Board of Tax Appeals and of "several of the Federal Courts," as so construing the statute. Other than the *Wells* case, *supra*, we have found only one court decision adopting this construction, viz., the District Court decision in *Robertson* v. *Nee* (D. C. Mo. W. D. June 2, 1938), which has been reversed in *Robertson* v. *Nee*, 105 F. (2d) 651 (C. C. A. 8th). The dictum in *Commissioner* v. *Krebs*, 90 F. (2d) 880 (C. C. A. 3d), following the *Wells* case, was later disapproved by the same court. *McBrier* v. *Commissioner*, 108 F. (2d) 967 (C. C. A. 3d).

Three of the Board decisions on this question were appealed in the Third, Fifth and Eighth Circuits, and were reversed, the Circuit Courts holding that the number of exclusions was determined by the number of beneficiaries:

McBrier v. *Commissioner*, 108 F. (2d) 967 (C. C. A. 3d).

Hutchings v. *Commissioner*, 111 F. (2d) 229 (C. C. A. 5th).

Rheinstrom v. *Commissioner*, 105 F. (2d) 642 (C. C. A. 8th).

Similar conclusions were reached by the Circuit Courts in the First and Fourth Circuits, and by the Court of Claims:

Welch v. *Davidson*, 102 F. (2d) 100 (C. C. A. 1st).

Early v. *Reid*, ... F. (2d) ..... (C. C. A. 4th, Aug. 7, 1940).

Pelzer v. *United States*, 31 F. Supp. 770 (Ct. Cls.).

And on January 30, 1940, the Board of Tax Appeals overruled its earlier decisions and reached the same conclusion. *Rubinstein* v. *Commissioner*, 41 B. T. A. 220. The present case now stands alone in its ruling on this question. In reaching this decision, the Circuit Court evidently felt bound by its previous decision in the *Wells* case (88 F. (2d) 339), although, as above pointed out, this issue was not squarely presented in that case.

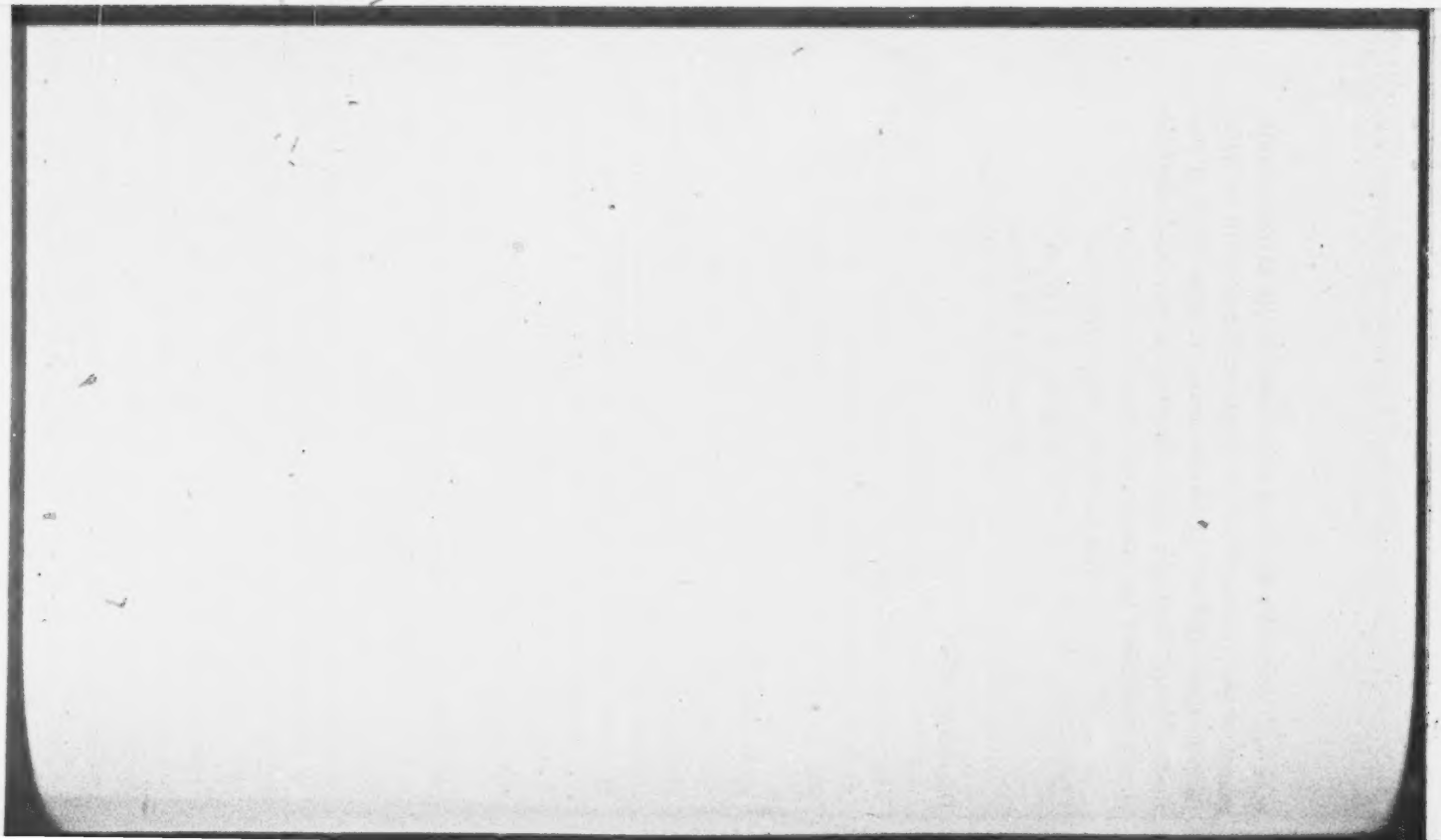
The decision of the lower court creates a needless and artificial distinction: If a man gives a house to his two children he gets an exemption of $10,000; but if he conveys the house to a trustee for the use of the children, his exemption is only $5,000—although he could easily increase it to $10,000 or $50,000 by creating several trusts and conveying an undivided interest to each trust. The "change of economic benefits" which this court has recognized as being "of the essence of a transfer" has been disregarded, and the amount of the tax has been made to depend on the form of the transfer and the "technicalities

of title." We submit that the decision of the Circuit Court cannot be reconciled with the words of the statute or with the principles underlying the decisions of this Court in the *Guggenheim*, *Sanford*, and *Rasc[redacted]*, and that it should therefore be reversed.

Respectfully submitted,

WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Petitioners.

December, 1940.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 495

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF FOR PETITIONERS.

WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for Petitioners,
135 South La Salle Street,
Chicago, Illinois.

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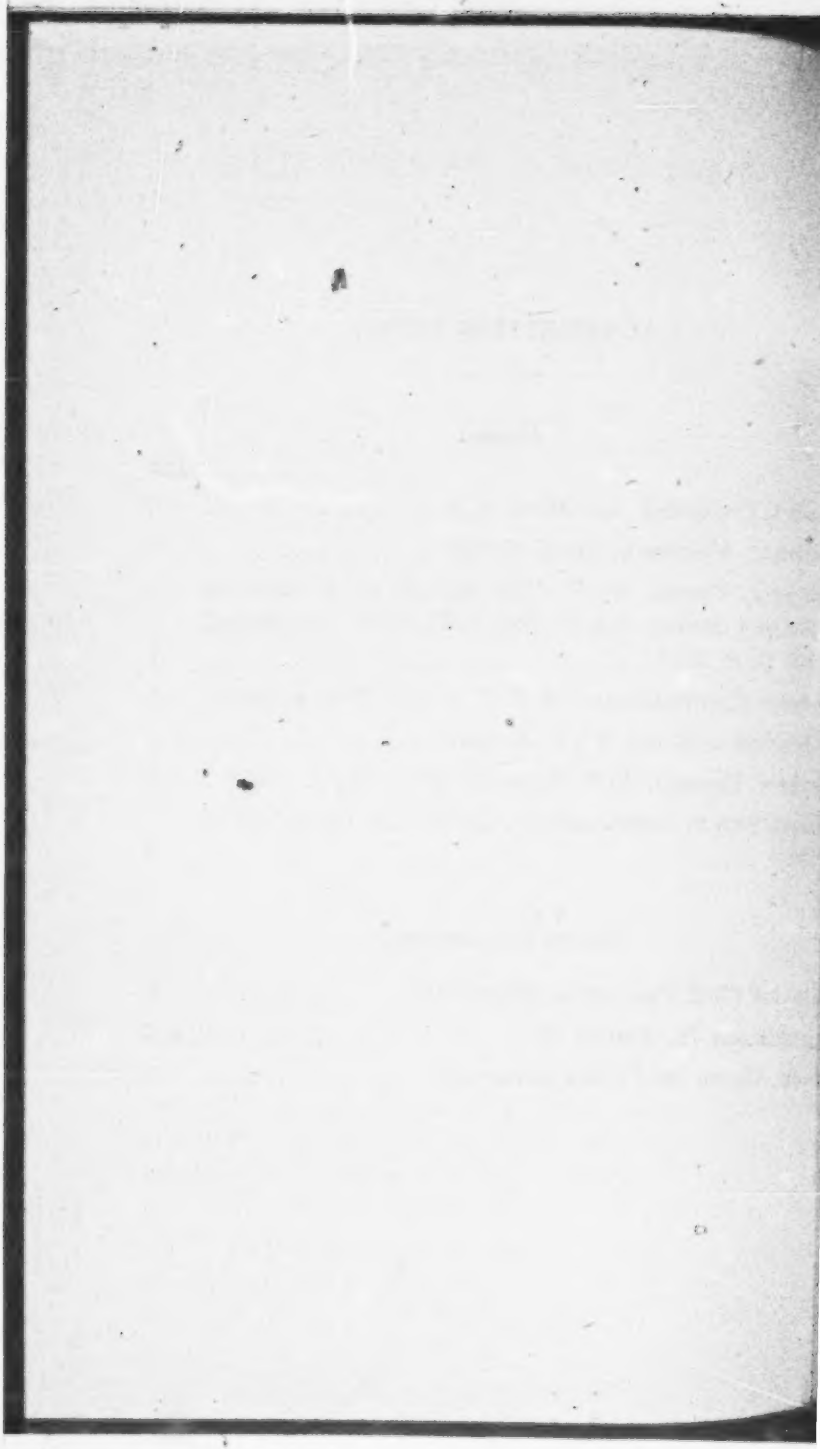

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The government's notice of appeal from the judgment of the District Court was limited to so much of the judgment order as awarded judgment in favor of the plaintiff, "which said award is directed pursuant to the conclusion of the Court that where a gift is made in trust the donee of the gift * * * is the beneficiaries rather than the trust" (R. 80). Rule 73(b) of the Rules of Civil Procedure provides that the notice of appeal "shall designate the judgment or part thereof appealed from." The determination that the beneficiaries received present, rather than future, interests was not referred to in the notice of appeal. The government should not now be permitted to raise this question. *Helvering* v. *Wood*, 309 U. S. 344, 348; *Carter* v. *Powell*, 104 F. (2d) 428, 430 (C. C. A. 5th), rehearing denied, 104 F. (2d) 912, certiorari denied, 308 U. S. 611.

But if the question is properly before the court, we believe that nevertheless the government's position cannot be supported.

In the case of the 1933 trust, Mary Ryerson Frost and Donald McKay Frost could at any time jointly demand that the principal be paid over to them.* This joint right extended not only to the proceeds of the insurance policy, but to the policy itself, and its cash surrender value (which was over $40,000). This right was substantially equivalent to ownership of the property. As Mr. Justice Holmes said in *Bullen v. Wisconsin*, 240 U. S. 625, 630, quoting from Lord St. Leonards, "To make a distinction between a general power and a limitation in fee, is to grasp at a shadow while the substance escapes." The interests of these two beneficiaries were scarcely less substantial because they were joint. The District Court's opinion provides a convincing analogy (R. 66, 28 F. Supp. 265, 267; its conclusion was not disturbed by the Circuit Court of Appeals on this point):

> "The government's contention that Donald McKay Frost and Mary Ryerson Frost are not the donees of the gift because neither has individual control over the property but must act jointly with the other is without merit, for under such reasoning a gift of a bank deposit, payable jointly to both of two persons (and not either) would be a gift to no one since neither had complete individual control. Yet it could not be contended that the bank was the donee."

In the case of the 1934 trust, the trust agreement provided (R. 15, 16) that immediately after the death of the insured, the trustees were to divide the trust property into two portions, if Isabelle McGenniss Ryerson was living, paying the income from one portion to her during her life, and transferring the other portion to the descendants of Donald Mitchell Ryerson. If a descendant was under 25 years old, the trustees were to pay him so much of the income of his share as they thought best, and accumulate the bal-

*The right to make such a demand existed while both were living and of sound mind. In the absence of a demand, the trustees were to pay one-fourth of the income to Mrs. Frost during her life, and accumulate the balance. (The trust agreement is quoted at R. 7-14; the provisions referred to are contained in sections 1 and 2, R. 8-9.) Both Donald McKay Frost and Mary Ryerson Frost are, and were at the time of the assignment, living and of sound mind (R. 72).

ance, transferring a portion of the principal to him when he reached 26, and the balance when he reached 30. Donald Mitchell Ryerson had died prior to the assignment, leaving two descendants, Joan and Anthony Ryerson, who were 18 and 16, respectively, when the assignment was made (R. 40). Isabelle Ryerson was 44 years old at the date of the assignment and her interest in the trust property was increased by the assignment by more than $5,000 (R. 40).

The fact that Isabelle Ryerson's interest in the trust fund was a life estate does not make it a future interest. *Blair* v. *Commissioner*, 300 U. S. 5, 13. The Treasury Regulations adopted this position (Article 11, Regulation 79, 1933 Edition, quoted at page 9 of our main brief).

Similarly, the interests of the children under the 1934 trust were not future interests by virtue of the fact that the trustees could accumulate so much of the income as was not used for their support. As the Circuit Court of Appeals for the Eighth Circuit said in *Rheinstrom* v. *Commissioner*, 105 F. (2d) 642, 647-8:

> "It is true that the three children, other than Stewart, received no unconditional right to have their shares of the income paid to them by the trustees. It is equally true, however, that the taxpayer retained no interest in the shares of income which were assigned to them, and that, by the terms of the trust, each of them (or the wives and children of the two sons) were to have his or her share or it was to be accumulated for his or her benefit. The enjoyment of the benefits conferred upon three of her children by the taxpayer was conditional, but it was to commence at once and not at some future date and was for their sole and immediate benefit. * * *
>
> "The Commissioner cites no case which sustains his position that the interests donated by the taxpayer to, or for the benefit of, three of her children, were future interests, and we think that they were not."

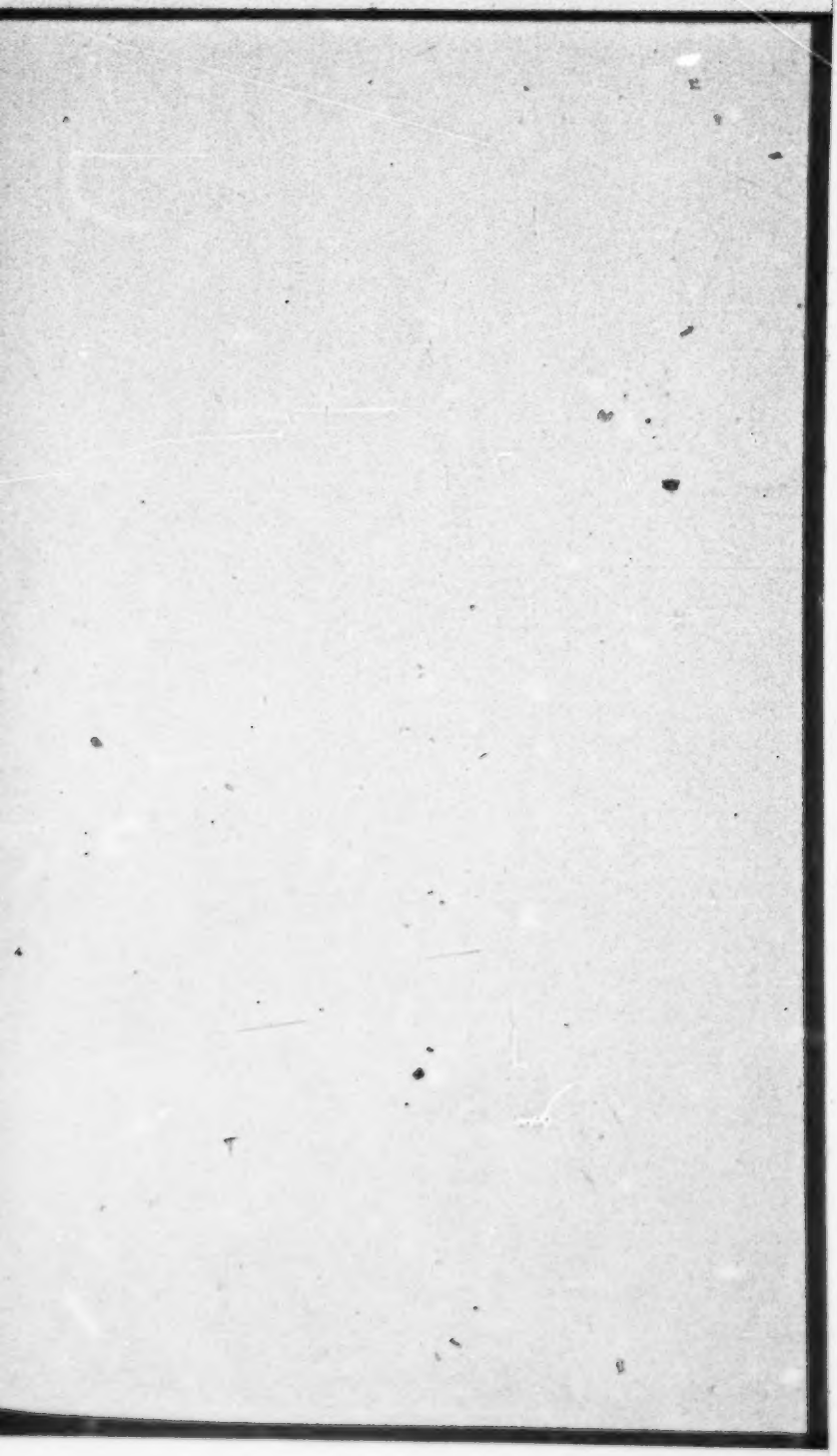
The children were the sole persons for whom the fund

inate the difficulty of ascertaining the number of eventual donees, therefore a life estate, presently commencing in possession and enjoyment, with an ascertained beneficiary, was intended to be excluded. We are similarly unable to perceive the "fatuity" of a decision of the Board of Tax Appeals in treating a life estate as a present interest. In the language of both the Committee Reports and the Treasury Regulations, a future interest is one "limited to commence in possession or enjoyment at a future date". This a life estate certainly is not. Article 11 of Regulations 79 (1933 ed.) definitely treated a life estate as a present interest.

Nor do we follow the argument at pages 35 through 38 of the *Pelzer* brief, that because the gift tax supplements the estate tax, and because wills frequently include trusts, no exemption should be permitted for gifts in trust. The exception of future interests from the exemption was, as appears from the Congressional Committee Reports, made not to penalize gifts of such a character, but for administrative convenience. The gift tax act was not primarily intended to discourage gifts—it taxed them. And wills equally commonly contain specific bequests. The argument that if the exclusion were permitted for gifts in trust, the estate tax could be avoided by an unlimited number of such gifts to the donor's "heirs presumptive" overlooks both the limited number of heirs presumptive and the fact that the purpose could equally be accomplished by outright gifts.

Respectfully submitted,

WALTER T. FISHER,
WILLIAM N. HADDAD,
Counsel for petitioners.



FILE COPY

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v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

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MEMORANDUM FOR THE UNITED STATES

We do not oppose the granting of the petition for a writ of certiorari in this case.

The decision of the court below on the question presented is in conflict with *Pelzer* v. *United States*, 31 F. Supp. 770 (C. Cls.), certiorari granted, October 21, 1940, No. 393, present Term. It is also in conflict with *Welch* v. *Davidson*, 102 F. (2d) 100 (C. C. A. 1st); *McBrier* v. *Commissioner*, 108 F. (2d) 967 (C. C. A. 3d); *Early* v. *Reid* (C. C. A. 4th), decided August 7, 1940, not officially reported but found in 1940 C. C. H., Vol. 4, par.

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9634; *Hutchings* v. *Commissioner*, 111 F. (2d) 229 (C. C. A. 5th), pending on petition for certiorari, No. 419, present Term; *Rheinstrom* v. *Commissioner*, 105 F. (2d) 642 (C. C. A. 8th); and *Robertson* v. *Nee*, 105 F. (2d) 651 (C. C. A. 8th).

In view of the conflict, we do not oppose the issuance of the writ.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

OCTOBER 1940.

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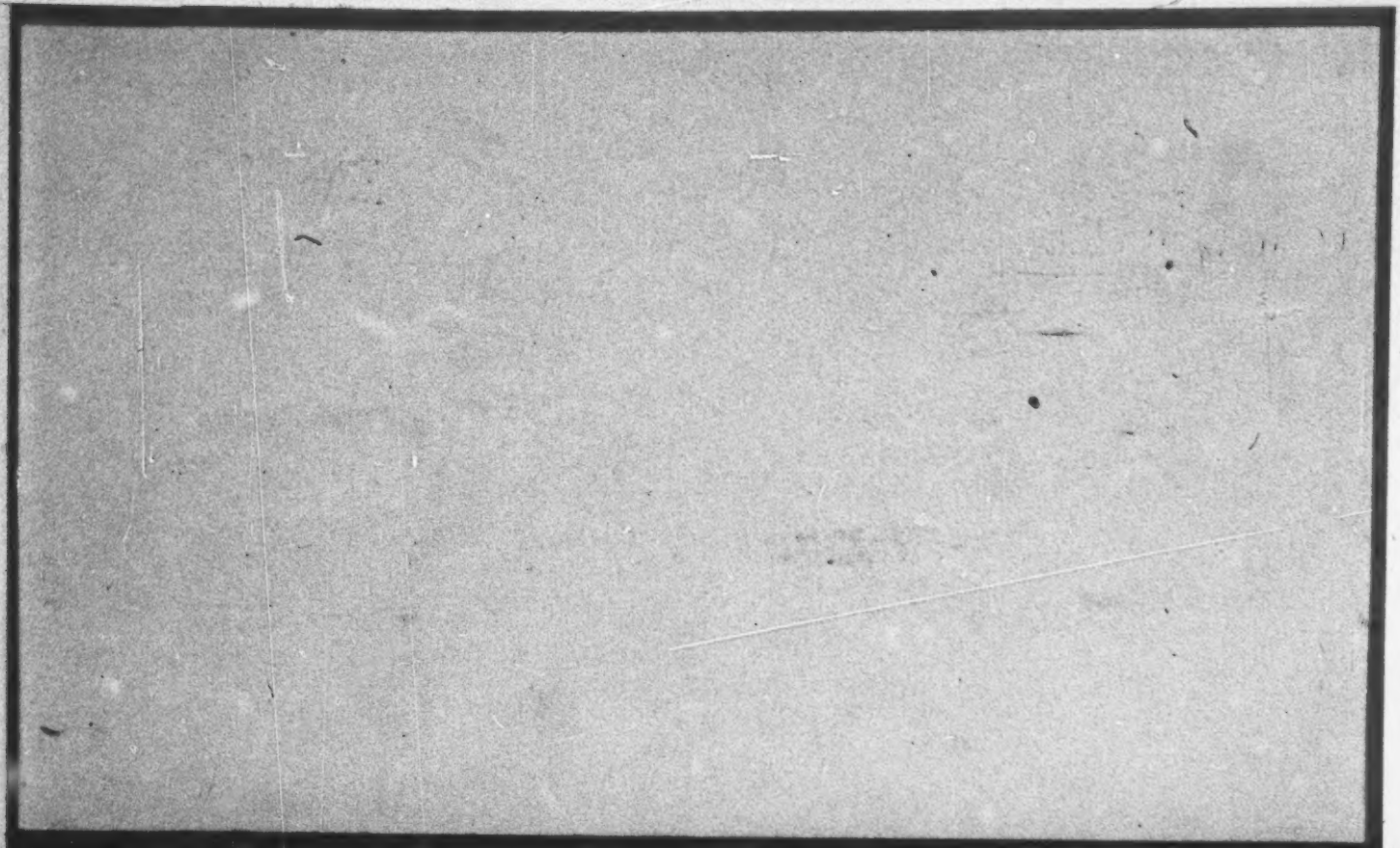

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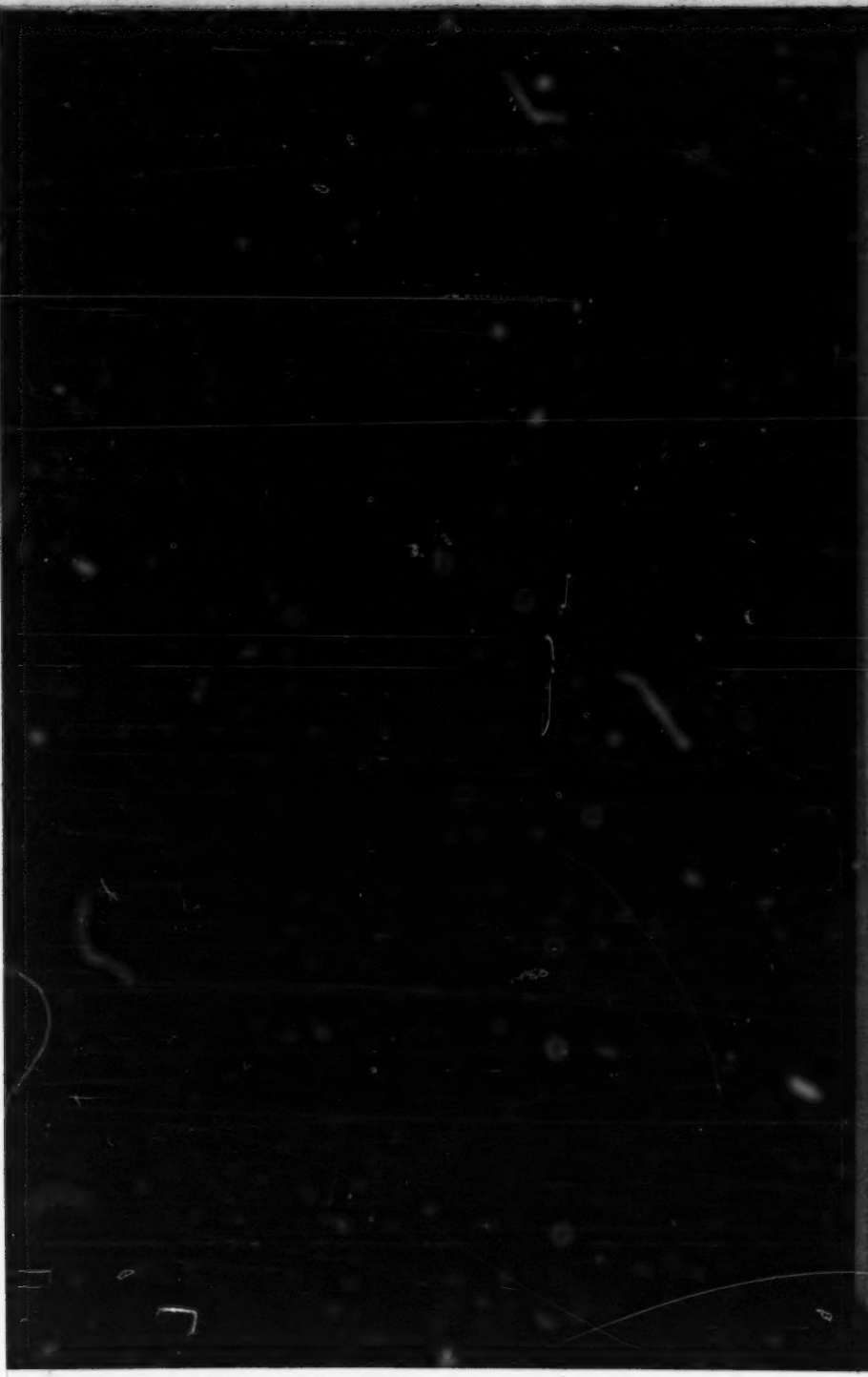

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 61–67) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90–97) is reported in 114 F. (2d) 150.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 9, 1940 (R. 97). The petition for a writ of certiorari was filed on October 9, 1940, and was granted on November 14, 1940. The jurisdic-

tion of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether under Section 504 (b) of the Revenue Act of 1932 the donor of a gift in trust is entitled to one $5,000 exclusion for the entire trust, or to a separate $5,000 exclusion for each of the beneficiaries of the trust.

2. If the number of such exclusions is to be determined by the number of beneficiaries, whether certain gifts in trust were of "future interests in property" for which no exclusions are allowable under Section 504 (b).

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Revenue Acts of 1932 and 1938 and of the Treasury regulations promulgated thereunder are set out in the Appendix to the brief for the United States in *United States* v. *Pelzer*, No. 393, this Term, to be argued herewith.

STATEMENT

The facts are not in dispute. So far as material to the issue here involved they may be summarized as follows:

In 1929, Mary Ryerson,[1] the taxpayer, purchased a single premium life insurance policy on her own

[1] Mary Ryerson, the original plaintiff, died during the pendency of the appeal in the court below, and the petitioners, as executors of her estate, were substituted as parties (R. 87, 89).

life, in the face amount of $100,000. This policy was subsequently reissued in the form of two single premium life insurance policies, each in the face amount of $50,000 (R. 39).

On December 26, 1934, the taxpayer assigned the first of these two policies to Donald McKay Frost and Mary Ryerson Frost, trustees under a trust agreement dated October 31, 1933 (R. 39). This trust instrument provided that the trustees should pay one-fourth of the trust income to Mary Ryerson Frost during her life and after her death in equal shares to her two daughters if living and if not to their issue, the balance of the trust income to be accumulated; that upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, or after their deaths by other designated persons, the trustees should dissolve the trust and pay over the principal to Donald McKay Frost and Mary Ryerson Frost or their issue as specified in the request; and that if the trust were not otherwise terminated sooner it should terminate upon the death of the survivor of Mary Ryerson Frost and her two children (R. 8–10, 39). This trust is hereafter referred to as the 1933 trust.

On the same date, December 26, 1934, the taxpayer assigned the second of the policies to Joseph T. Ryerson and Edward L. Ryerson, trustees under a trust agreement dated November 15, 1934 (R. 39). This instrument provided that upon the death of the grantor the trustees should hold and disburse the proceeds of the insurance, as follows: If Isabelle

Ryerson, the widow of the grantor's son, Donald Ryerson, survived the grantor, the trustees were to divide the trust estate into two portions, one portion comprising two-thirds in value of the trust estate and the other portion one-third. Isabelle Ryerson was then to receive the income from the smaller portion of the estate for her life, and on her death the principal of that portion was to be distributed to those persons who would be the heirs at law of Donald Ryerson had he died on the same date as Isabelle Ryerson. Two-thirds of the estate, or, if Isabelle Ryerson did not survive the grantor, all of the estate, was to go to those descendants of the grantor's son, Donald Ryerson, who should survive the grantor, and if no descendants should so survive, to the grantor's heirs at law. Persons taking under these provisions were to receive one-third of their share of the principal on reaching twenty-six and the balance on reaching thirty, and the income from their share in the meanwhile (R. 15–17). This trust is hereafter referred to as the 1934 trust. Donald Ryerson had died on May 8, 1932, leaving as his sole descendants Joan and Anthony Ryerson (R. 40).

In determining the gift tax liability for 1934, the Commissioner of Internal Revenue allowed one $5,000 exclusion from the gift to the 1933 trust and no exclusion from the gift to the 1934 trust. Proceeding, evidently, upon the theory that the beneficiaries, and not the trusts, were the persons to whom the gifts were made, he allowed an exclusion for Mary Ryerson Frost from the gift to the 1933 trust, but

ruled that the gifts to the beneficiaries of the 1934 trust were of future interests (R. 33).

The donor paid the tax so computed and brought suit for a refund. In her complaint she claimed two $5,000 exclusions from the gift to the 1933 trust, one for Mary Ryerson Frost (which had been allowed) and one for Donald McKay Frost. She claimed three $5,000 exclusions from the gift to the 1934 trust, one for Isabelle Ryerson and one each for Joan and Anthony Ryerson (R. 4–5).

The District Court held for the taxpayer, ruling that two exclusions were allowable on account of the gift to the 1933 trust and three exclusions on account of the gift to the 1934 trust (R. 65–66).

The Circuit Court of Appeals reversed. It held, following its earlier decision in *Commissioner* v. *Wells*, 88 F. (2d) 339, that the trusts were the donees of the gifts rather than the beneficiaries, so that one exclusion was allowable for each of the two trusts (R. 94–96).

ARGUMENT

This case presents two questions. The first is whether under Section 504 (b) of the Revenue Act of 1932 the donor is entitled only to one $5,000 exclusion for the entire trust, or is entitled to a separate exclusion on account of each beneficiary of the trust who received a present interest in the gift to it. The second question is whether, if it be held that the number of exclusions is to be determined by the number of beneficiaries, the four beneficiaries on account of whom petitioners claim exclusions, in

addition to the exclusion allowed by the Commissioner, received present interests in the gifts in trust, or only future interests for which no exclusions are allowable. The first of these questions is exactly presented in *United States* v. *Pelzer*, No. 393, this Term, to be argued herewith, and the second is substantially similar to the second question in the *Pelzer* case. Hence we adopt for this case the brief for the United States in the *Pelzer* case and discuss here only the additional facets of the future interest question raised by the facts of this case and those of the taxpayer's arguments which are not covered in the *Pelzer* brief.

1. On the first branch of the case petitioners' main reliance (and also the main reliance of the taxpayer in the *Pelzer* case) is on *Estate of Sanford* v. *Commissioner*, 308 U. S. 39; *Rasquin* v. *Humphreys*, 308 U. S. 54, and earlier similar cases. In the *Humphreys* case the trust instrument reserved to the donor the power to change the beneficiaries, and the Court held that a gift to the trust was "incomplete and not subject to the gift tax" (p. 56). Correlatively, in the *Sanford* case the Court held that a gift in trust became subject to the gift tax when the donor relinquished the power to designate new beneficiaries. But in considering whether the retention by the donor of this degree of control rendered the gift incomplete, the Court decided nothing about whether the trust or the beneficiary is the "person" to whom a gift in trust is given. Cf. Sibley, J., concurring in *Hutchings* v. *Commissioner*, 111 F. (2d) 229, 231

(C. C. A. 5th). Doubtless the *Humphreys* and *Sanford* cases show that it is the control retained by the donor rather than the interest taken by the trust entity which is decisive of whether the transfer is subject to the gift tax, but that proposition has no perceptible bearing on the present issue, which certainly was not considered by the Court in those cases.

2. Applying here the argument in the *Pelzer* brief with respect to future interests, we think that none of the beneficiaries of the 1933 trust had present interests, except perhaps Mary Ryerson Frost, for whom an exclusion was allowed by the Commissioner. Under the 1933 trust instrument one-fourth of the income was to be paid to her for life and after her death to her two daughters. The remaining three-fourths of the income was to be accumulated until the termination of the trust. While the principal of the trust was to be distributed and paid over to Mary Ryerson Frost and Donald McKay Frost upon their joint request at any time, Donald McKay Frost, for whom the petitioners claim an additional exclusion, had no present beneficial interest in the property. He could terminate the trust, and so secure a share in the corpus, only with the concurrence of Mary Ryerson Frost. Moreover, a $5,000 exclusion is not allowable for any gift to Donald McKay Frost in the absence of a showing that it had that value to him. Since he could take no action without the concurrence of Mary Ryerson Frost, we submit that it is impossible to place any

value upon his interest. In this connection it may be noted that the petitioners here, unlike the taxpayer in the *Pelzer* case, recognize that they are under the necessity of establishing the value of each gift to each beneficiary for whom an exclusion is claimed. See R. 5, 40.

With regard to the 1934 trust it also appears that the beneficiaries had future interests. No one took any present enjoyment in the property conveyed to this trust. The corpus of the trust was a life insurance policy and, although the trustees were empowered to receive the cash surrender value of the policy, there was to be no distribution to any beneficiary until after the death of the grantor (R. 16). Upon the grantor's death, if Isabelle Ryerson survived her, the trust estate was to be divided into two portions, Isabelle Ryerson to receive the income from one portion with remainder over to certain heirs. The remaining portion, or all of the estate if Isabelle Ryerson did not survive the grantor, was to go to the surviving descendants of the grantor's deceased son, that is, his two daughters, or, if they did not survive the grantor, the property was to go to her heirs at law. Thus for all of the beneficiaries there was, as in the *Pelzer* case, a waiting period during which not even income was to be disbursed. Further, none of the beneficiaries would receive anything unless he survived the grantor. We think it is apparent that the interests of the beneficiaries were "limited to commence in possession or enjoyment at a future date" (H. Rep. No. 708, 72d Cong.,

1st Sess., p. 29) and that they were, therefore, future interests within the meaning of Section 504 (b).

CONCLUSION

We submit that the decision of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
SAMUEL O. CLARK, Jr.,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
THOMAS E. HARRIS,
ELIZABETH B. DAVIS,
Special Assistants to the Attorney General.

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SUPREME COURT OF THE UNITED STATES.

No. 494.—October Term, 1940.

The United States of America, Petitioner, *vs.* Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 3, 1941.]

Mr. Justice Douglas delivered the opinion of the Court.

The question here is the same as that in *Guggenheim* v. *Rasquin*, No. 92, decided this day. Consequently the decision of the Circuit Court of Appeals holding that cash-surrender value on the dates of the gifts was the proper method of valuing single-premium life insurance policies for gift-tax purposes (114 F. (2d) 150) must be reversed, unless the elapse of time between the issuance of the policies and the making of the gifts calls for a different result. The single-premium policies here involved were taken out by the insured in 1928 and 1929. They were assigned as gifts in December, 1934, when the insured was 79 years old. The cost of the policies was less than their cash-surrender value at the dates of the gifts. But the cost of replacing the policies at the then age of the insured would have been in excess of their cash-surrender value. We think that such cost of replacement, as held by the District Court, is the best available criterion of the value of the policies for the purposes of the gift tax. The elapse of time between issuance and assignment of the policies does not justify the substitution of cash-surrender value for replacement cost as the criterion of value. We cannot assume with respondents that at the dates of the gifts the policies presumably had no insurance, as distinguished from investment value to the donor. Here, as in the case where the issuance of the policies and their assignment as gifts are simultaneous, cash-surrender value reflects only a part of the value of the contracts. The cost of duplicating the policies at the dates of the gifts is in

absence of more cogent evidence the one criterion which reflects both their insurance and investment value to the owner at that time. Cf. Vance on Insurance (2d ed.) pp. 332-333; *Speer* v. *Phoenix Mutual Life Ins. Co.*, 36 Hun. 322. The fact that the then condition of an insured's health might make him uninsurable emphasizes the conclusion that the use of that criterion will result in placing a minimum value upon such a gift.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 495.—October Term, 1940.

Joseph Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, Petitioners, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 3, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

This is a companion case to No. 419, *Helvering* v. *Hutchings*, and No. 393, *United States* v. *Pelzer*, decided this day, and it presents the questions decided in those cases.

The sole question raised by the petition for certiorari is whether, under § 504(b) of the Revenue Act of 1932, 47 Stat. 169, 247, the donor of property in trust for numerous beneficiaries is entitled to a single gift tax exemption or exclusion to the extent of the first $5,000 of the gift or to separate exemptions of $5,000 for each beneficiary. The Government insists that if that question be decided against it, it is nevertheless entitled to retain the judgment below in its favor because the gifts to the beneficiaries were of future interests which, by § 504(b), are denied the benefit of the exclusion otherwise allowed by the section.

In 1934 petitioners' testatrix transferred two single premium insurance policies on her own life maturing at a future date, as additions to two separate trusts, one created in 1933, the other established in 1934 but before the transfer. The instrument creating the first trust provided that the trustees should pay over one-fourth of the net income to Mary Ryerson Frost, one of the trustees, for life, with remainder over for life to her two daughters if surviving at her death, with further remainders over to their issue *per stirpes*. The trust instrument directed that the remaining three-fourths of the income should be accumulated and added to the principal of the trust. It provided that the trust was to terminate upon the death of the last survivor of three persons, the first life tenant and her two daughters, and was then to be distributed, the particu-

lar distribution being dependent upon contingencies which are not now material. The trust instrument also contained numerous provisions for the termination of the trust by joint action of the trustees, Donald McKay Frost and Mary Ryerson Frost, who was also life tenant, or by the survivor or other of them in the case of the death or mental incapacity of either. Other provisions were made for the termination of the trust and distribution of the trust property in the event of the death or mental incapacity of both, without having exercised their power of termination.

The instrument creating the 1934 trust provided that upon the death of the grantor, who was the insured, who was living at the time of the transfer, the trustees should distribute the proceeds of the insurance as follows: If the widow of the grantor's son survived the grantor the income of one-third of the proceeds of the insurance policy was to be paid to the son's widow for life with remainders over to those persons who would be heirs at law of the son had he died at the same time as the life tenant. The remaining two-thirds of the proceeds or all if the son's widow did not survive the grantor, were to go to the descendants of the grantor's son then surviving, with gifts over in default of such descendants.

In a suit brought by petitioner to recover overpaid gift taxes for the year 1934 the district court ruled that in the computation of the tax the taxpayer was entitled to two exclusions to the extent of $5,000 each for the gifts made to Mary Ryerson Frost and Donald McKay Frost under the 1933 trust and to three exclusions under the 1934 trust, one for the son's widow and two for his two living descendants. The Court of Appeals for the Seventh Circuit reversed, 114 F. (2d) 150, holding that the two trusts were the donees and that a single exclusion was allowable for each trust. We granted certiorari November 12, 1940, to resolve the conflict between the decision below and that of the Circuit Courts of Appeals in the *Pelzer* case and the *Hutchings* case.

For the reasons stated in our opinion in the *Hutchings* case we hold that the beneficiaries of the two trusts were the persons to whom the gifts were made and that the gifts to them and not to the trusts, as the courts below held, were entitled to the benefit of the exclusion allowed by § 504(b) provided the gifts were not of "future interests" to which the section denies the benefit of the exclusion.

As the Government has not sought certiorari it cannot attack the judgment below, but it is free to sustain it upon any legal ground which will support it. *LeTulle* v. *Scofield*, 308 U. S. 415, 421, 422. Even though the judgment below was rested upon the erroneous ground that the trusts were "persons" to whom the gifts were made within the meaning of § 504(b), the Government may justify the judgment here on the ground that petitioners are not entitled to the exclusions claimed so far as the gifts were of future interests.

The gifts of a separate equal share of the corpus of the 1933 trust to each of the two trustees in the event of their joint request that the trust be terminated was a gift upon a contingency which might never happen. For the reasons stated in our opinion in the *Pelzer* case those gifts were of future interests within the meaning of § 504(b) and consequently were not entitled to the benefit of the exclusion. While a present power of disposition for one's own benefit is the equivalent of ownership, see *Curry* v. *McCandless*, 307 U. S. 357, 370, *et seq.*, and cases cited, here the joint power was not for the joint benefit of the donees of the power. Its exercise could only operate for the benefit of each to the extent of one-half of the trust property and then only in the event that both agreed to unite in its exercise. In any case use and enjoyment of any part of the trust fund by either was postponed until such time as both joined in the exercise of the power. The interests granted to the trustees upon their termination of the trust should therefore have been included to their full extent in the computation of the gift tax because they were "future interests" within the meaning of § 504(b) and Art. XI, Treasury Regulations 79. As the petitioners have been allowed one exclusion by the judgment below which is not attacked here it is unnecessary to consider whether the life interest in the income given to Mary Ryerson Frost is a present or future interest within the meaning of § 504(b).

For like reasons we conclude that the gifts to the beneficiaries of the 1934 trust were of future interests and that the petitioners are entitled to no exclusion with respect to them. The gift of income to the life tenant was contingent upon her survivorship of the grantor at a future date. The gifts of the principal amount of the proceeds of the policy to descendants of the deceased son of the grantor were in part contingent upon their survivorship of the son's widow and her survivorship of the grantor or, if she did not survive him, then the gifts of the entire principal were con-

tingent upon survivorship of the descendants at the grante
death. Thus all those who might become entitled to the use a
enjoyment of the trust, principal and income, were ascerta
able only upon the happening of one or more uncertain futu
events, survivorship of one or more persons at the death of
donor, and so they were donees of gifts of "future interest
within the meaning of § 504(b) and the treasury regulations. Co
sequently petitioners are not entitled to the single exclusion whi
the court below allowed. But because the Government has sou
no cross-petition attacking the judgment below, it must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.